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GENERAL LAWS
AND
CONSTITUTIONAL PROVISIONS
OF THE
State of Montana

RELATING TO

Railroad, Express, Sleeping Car, Water, Heat, Light, Street Railway, Power, Telegraph and Telephone Companies, Navigation, Docks and Wharves; together with Laws relating to the Inspection and Weighing of Grain, Inspection and Quarantining of Stock and Horticulture, Transportation of Game and Fish.

Compiled and Published by

The Railroad and Public Service Commission
OF MONTANA.

HELENA, MONTANA,
September 1st, 1913.



"INDEPENDENT PUBLISHING COMPANY, HELENA, MONTANA."

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PART I.

CONSTITUTIONAL PROVISIONS.

ARTICLE III.

Rights of the People.

Sec. 11. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunities shall be passed by the legislative assembly.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

ARTICLE V.

Legislative Power.

Sec. 38. The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

ARTICLE XII.

Revenue and Taxation.

Sec. 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

Sec. 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

Sec. 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in

such counties, cities, towns, townships and school districts.

Sec. 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

ARTICLE XIII.

Public Indebtedness.

Sec. 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

ARTICLE XV.

Corporations Other Than Municipal.

Sec. 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this constitution, shall thereafter have no validity.

Sec. 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; Provided, that any such laws shall be subject to future repeal or alterations by the legislative assembly.

Sec. 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

Sec. 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated com-

panies, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

Sec. 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

Sec. 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchise, with any other railroad corporation, express or other transportation company, owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express, or other transportation company, act as an officer of any other railroad, express or other transportation company, owning or having control of a parallel or competing line.

Sec. 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad

or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

Sec. 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

Sec. 9. The right of eminent domain shall never be abridged nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Sec. 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

Sec. 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

Sec. 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

Sec. 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

Sec. 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquired by purchase or otherwise, any other competing line of telegraph or telephone.

Sec. 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

Sec. 16. It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of negligence of such person, company or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

Sec. 17. The Legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

Sec. 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

Sec. 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

PART II.

RAILROAD COMMISSION LAW.

4363. **Creation of Commission.**—There is hereby created and established a Board of Railroad Commissioners of the state of Montana, to be known as the "Board of Railroad Commissioners of the State of Montana," said Board to consist of three members who shall be qualified electors of the state. The first Board of Railroad Commissioners shall be composed of the following persons, namely: B. T. Stanton of Gallatin County; Nathan Godfrey of Lewis and Clark County and E. A. Morley of Silver Bow County. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said Board; one for a term of two years; one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said Board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such Board whose term shall expire on the first day of January following. Any vacancy occurring in the Board shall be filled by appointment by the Governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the Board, there shall be elected one member to fill out the unexpired term for which such vacancy exists. No person in the employ of, or holding any official relations to any railroad or owning any stocks, bonds or other securities of any railroad, or who is, or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds or other securities thereof, shall be a member of said Board. Any member of said Board who, after his election or appointment to office, or after his induction into office, shall become an employe of, or holder of any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds or other securities of

any railroad, shall forfeit his office, and the Governor shall appoint a successor thereto as herein provided in case of a vacancy in said Board. No Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. [Act February 26, 1907, Sec. 1.] (10th Sess. Chap. 37).

4364. **Oath and bond.**—Each member of said Board, and each person appointed to office by said Board, before entering upon the duties of his office, shall take and subscribe the oath specified in Section one, Articles XIX, of the Constitution of the State of Montana, and such oath shall be filed in the office of the Secretary of State. The members of said Board and the Secretary thereof, shall each give at the same time a bond to the state in the sum of Twenty-five Thousand Dollars, with securities to be approved by the Governor, conditioned for the faithful discharge of the duties of their respective offices. [Act February 26, 1907, Sec. 2.] (10th Sess. Chap. 37.)

4365. **Meeting of Board. Quorum.**—The office of the Board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and non-judicial days excepted. The Board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be expedient. The sessions of the Board shall be public. A majority of the Board shall constitute a quorum for the transaction of all business. The members of the Board of Railroad Commissioners shall have the authority to administer oath and affirmations. The Board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under the law. [Act February 26, 1907, Sec. 3.] (10th Sess. Chap. 37).

4366. **Seal.**—The Board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commissioners of the State of Montana." and said seal shall be affixed only to: First, writs; second, authentications of a record or other proceeding, or to a copy of a document on file in the office of the said Board. The courts of this state shall take judiciary notice of such seal. [Act February 26, 1907, Sec. 4.] (10th Sess. Chap. 37.)

4367. **Officers of Board.**—The Board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said Board, to serve during the pleasure of the Board. Said Board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said Board to the proper performance of its duties. [Act February 26, 1907, Sec. 5.] (10th Sess. Chap. 37.)

4368. **Salaries.**—The salary of each commissioner shall be Four Thousand Dollars per annum; the salary of the Secretary shall be Three Thousand Dollars per annum; and the salary of the stenographer employed by the Board shall be fixed and determined by the Board, and shall not exceed the sum of Twelve Hundred Dollars per annum. The salaries of the persons so employed shall be paid as other expenses of the Board are paid. The salaries of the Commissioners and Secretary shall be paid from the State Treasury in equal quarterly payments, payable April 1st, July 1st, October 1st, and January 1st. [Act February 26, 1907, Sec. 6.] (10th Sess. Chap. 37)

4369. **Expenses of Board of Employes.**—Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the State Board of Examiners and paid as other expenses of the Board. The State shall furnish said Board with suitable offices in the State Capitol building, at Helena, Montana, and provide it with all necessary furniture, stationery and printing, upon requisitions signed by the Chairman of said Board. [Act February 26, 1907, Sec. 7.] (10th Sess. Chap. 37.)

4370. **Same.**—Said Board shall also be allowed the sum of One Thousand Dollars per annum for postage, expressage and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the State Board of Examiners, and the Board shall file, with its vouchers for such payments, a statement, verified by a member of the Board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them. [Act February 26, 1907, Sec. 8.] (10th Sess. Chap. 37.)

4371. **Duties of Secretary.**—The Secretary shall keep a full and complete record of all proceedings of the Board, and be the custodian of its records, and file and preserve at the office of the Board all books, maps, documents and papers entrusted to his care, and be responsible to the Board for the same. He shall perform such other duties as the Board may prescribe. [Act February 26, 1907, Sec. 9.] (10th Sess. Chap. 37.)

4372. **Process to Compel Attendance and Examination of Witnesses.**—The process issued by said Board shall be under seal and extend to all parts of the state. Said Board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve of courts of record, or by any person appointed by the Board for such purpose. In the event the process issued by the Board is a subpoena for the attendance of a witness, and he shall have failed, neglected or refused to obey the same, the Board is hereby authorized to file a petition with any District Court in the State, setting up the facts and the necessity of having such witness appear in such trial, and the Court shall thereupon summarily direct that a subpoena be issued out of the Court requiring the attendance of any person or persons as a witness before the Court; and, the Board shall thereupon have the power and authority to examine such witness before said Court, under oath, respecting any inquiry or investigation being made by said Board, under and pursuant to the provisions of this Act. The Court shall likewise when any petition is filed stating the necessity therefor order the production by any person or corporation, for examination in said Court, any books, papers, records or files necessary or pertinent to any inquiry or investigation then being made by said Board. [Act February 26, 1907, Sec. 10.] (10th Sess. Chap. 37.)

4373. **Definitions and Terms.**—The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within

this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping car companies. The term "Board" in this act shall be taken to mean the Board of Railroad Commissioners of the State of Montana. The provisions of this act shall apply to all persons, firms or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state. [Act February 26, 1907, Sec. 11.] (10th Sess. Chap. 37.)

4374. **"Railroad."**—The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and all common carriers. [Act February 26, 1907, Sec. 12.] (10th Sess. Chap. 37.)

4375. **Power of Board to Fix Rates, Schedules and Classifications.**—The power and authority is hereby vested in the said Board, and it is hereby made its duty to adopt as soon as practicable after the organization of the Board, all necessary rates, charges and regulations to govern and regulate freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and to make the same effective by enforcing the penalties prescribed in this Act. The said Board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over the railroads in this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said Board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said Board also shall have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls or charges on any property which shall for any reason remain unclassified by the Board shall not in any event ex-

ceed the highest rates fixed for any classification by said Board. And it shall be within the province of the Board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the State of Montana or any point therein in the way of rates for the transportation of freight or passengers from points without the State to points within the State and vice versa; and in proper cases, where it appears that the United States Interstate Commerce Commission Law has been violated, it is hereby made the duty of said Board to make complaint to the Interstate Commerce Commission of the United States and to aid such Commission in any investigation it may make concerning violations of the United States Law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and State Law, and to protect the interests of the people. [Act February 26, 1907, Sec. 13.] (10th Sess. Chap. 37.)

4376. **Making Schedules Effective.**—When any schedules shall have been made or revised, it shall be the duty of said commissioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and rates fixed and established by the Board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said Board. Each railroad

affected by the provisions of this act shall display in a conspicuous place in each of its stations in this state, a schedule printed in plain legible English type, showing all classifications and rates fixed and established by the said Board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than One Hundred Dollars, nor more than Five Hundred Dollars for each day that such failure or neglect is continued. [Act February 26, 1907, Sec. 14.] (10th Sess. Chap. 37.)

4377. **Power to Alter Classification or Rate. Hearing Complaint.**—The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said Board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said Board must, within forty days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board. [Act February 26, 1907, Sec. 15.] (10th Sess. Chap. 37.)

4378. **General Powers of Board.**—The Board shall have the general supervision of all railroads, express companies, car companies, sleeping car companies, freight and freight line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said Board and within its power and authority under the provisions of Act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employes thereof. The Board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investiga-

tion before said Board and to hear and take testimony in the progress of any inquiry or investigation authorized by this act. [Act February 26, 1907, Sec. 16.] (10th Sess. Chap. 37.)

4379. **Investigation Into Accidents.**—The said Board or some members thereof, to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state, resulting in death or injury to any person, of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than Two Thousand Dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the Board. [Act February 26, 1907, Sec. 16a.] (10th Sess. Chap. 37.)

4380. **Duty of Railroad Company to Report Accidents.**—It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the Board of Railroad Commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed. [Act February 26, 1907, Sec. 17.] (10th Sess. Chap. 37.)

4381. **Witnesses; Compensation; Immunity.**—The said Board in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as they may prescribe. Each witness shall receive the sum of Three Dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner or board, upon any investigation, proceeding or trial under the provisions of this Act or for any violation of any of them, upon the ground or for the reason that the testimony or evidence, documentary or otherwise required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture;

but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action or investigation. [Act February 26, 1907, Sec. 18.] (10th Sess. Chap. 37.)

4382. **Powers to Compel Railroad Companies to Provide Adequate Accommodations and Service.**—The Board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations. [Act February 26, 1907, Sec. 19.] (10th Sess. Chap. 37.)

4383. **Attorney General As Attorney For Board.**—The Attorney General is hereby constituted the attorney and counselor of said Board, and the county attorney of every county in the state, shall, on the request, and at the direction of the Attorney General, assist in all cases, proceedings and investigations undertaken by said Board under this law, in his own county; provided, that said Board shall have power and authority to employ special counsel, with the consent and approval of the Attorney General to assist in any case, matter, proceeding or investigation instituted under this law. It is hereby made the duty of the Attorney General, upon direction of said Board, and of the County Attorney of each county in this state, upon direction of the Attorney General, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the Supreme Court. The fees and expenses of additional counsel shall be fixed and determined by the State Board of Examiners, and allowed and paid as items of expense the same as other items of expense of said Board of Railroad Commissioners. [Act February 26, 1907, Sec. 20.] (10th Sess. Chap. 37.)

4384. **Court Review of Action of Board. Pleadings.**—Ac-

tions to review the determination of the Board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said Board to make, fix or establish any classification, rate, toll, charge, regulation or order, shall be commenced in the District Court of the county having jurisdiction thereof by filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in the Code of Civil Procedure in civil actions, or the Court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; provided, however, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If upon the hearing the Court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said Board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the Court, or by the Judge thereof at chambers. [Act February 26, 1907, Sec. 21.] (10th Sess. Chap. 37.)

4385. **Prohibition Against Rebates and Discrimination.**—If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand or receive from any person, firm or corporation, a greater or less compensation for any services rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said Board of Railroad Commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than Five Hundred, nor more than Two Thousand Dollars for each offense; provided, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the State. [Act February 26, 1907, Sec. 22.] (10th Sess. Chap. 37.)

4386. **Discrimination.**—If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand or receive from any person, company, firm or corporation, a

greater rate, charge or compensation than that fixed and established by the said Board of Railroad Commissioners for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the State of Montana a sum not less than Five Hundred Dollars, nor more than Two Thousand Dollars. [Act February 26, 1907, Sec. 23.] (10th Sess. Chap. 37.)

4387. **Jurisdiction to Enforce Orders of Board.**—The District Court shall have jurisdiction to enforce by proper decree, injunction or order, the rates, classifications, rulings, orders and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the Attorney General or County Attorney, whenever advised by the Board that any railroad is violating or refusing to comply with any rule, order, rate, classification or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order regulation, rate or classification involved is unreasonable and unjust as to them. If in such action, it be the decision of the Court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, order, rate or classification by the defendant, and its officers, agents, servants and employes, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants or employe of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding One Thousand Dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge him-

self therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate or classification shall be modified or vacated by the Board. Provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the Constitution of the United States, or as provided by the Constitution of this state. An appeal shall lie to the Supreme Court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the Supreme Court. [Act February 26, 1907, Sec. 24.] (10th Sess. Chap. 37.)

4388. **Same. Appeals.**—Appeals may be taken to the Supreme Court from the judgment of any District Court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business, and original proceedings in such Court, and shall be heard and determined as are appeals in civil actions. [Act February 26, 1907, Sec. 25.] (10th Sess. Chap. 37.)

4389. **Actions to Recover Excess Charges.**—Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the Board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the District Court of the county in which such payment was made. Provided, such action shall be brought within twelve months from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any excess or overcharge to any railroad shall be, or held to be a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action. [Act February 26, 1907, Sec. 26.] (10th Sess. Chap. 37.)

4390. **Actions to Determine Reasonableness of Rates or Classification.**—Any railroad may bring an action in the District Court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation or order of the Board is applicable, against the said Board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation or order made, fixed or established by the Board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action the classification, rate, toll, charge, regulation or order of the Board affecting rates or charges shall be deemed to be final and conclusive; and provided, further, that in any action, hearing or proceeding in any court, the classification, rate, tolls, charges, regulations and orders made, fixed and established by said Board shall prima facie be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section, shall be fixed and assessed as by the court may seem just and equitable. [Act February 26, 1907, Sec. 27.] (10th Sess. Chap. 37.)

4391. **Action By Shippers.**—Any shipper, or other person interested, may bring an action in the District Court of the County where the principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation or order of the Board is applicable, against the said Board of Railroad Commissioners as defendant, to determine whether or not any such classification, rate, toll, charge, regulation or order made, fixed or established by the Board under the provisions of this act is just and reasonable; provided, that until the final decision in any such action, the classification, rate, toll, charge, regulation or order of the Board affecting rates or charges shall be deemed to be final and conclusive; except as herein otherwise provided; and provided, further, that in any action, hearing or proceeding in any court, the classifications, rates, tolls, charges, regulations and orders made, fixed and established by said Board shall prima facie be deemed to be just, reasonable and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes. [Act February 26, 1907, Sec. 28.] (10th Sess. Chap. 37.)

4392. **Penalties for Violation of Act By Railroad.**—If any

railroad shall wilfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than Five Hundred Dollars. [Act February 26, 1907, Sec. 29.] (10th Sess. Chap. 37.)

4393. **Recovery of Penalties and Forfeiture.**—All penalties and forfeitures incurred, levied and made under the provisions of this act, shall be collected by said Board of Railroad Commissioners and paid over to the State Treasurer and credited to the General fund; provided, however, that should the said Board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said Board. [Act February 26, 1907, Sec. 30.] (10th Sess. Chap. 37.)

4394. **Board Not to Receive Favors or Gratuities From Railroad.**—No railroad commissioner, nor the said secretary shall, directly or indirectly, solicit or request from, or recommend to any railroad corporation, or any officer, attorney or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney or agent, offer any place, appointment or position or other consideration to such commissioners or either of them, nor to any clerks or employes of the commission or of the Board, neither shall the commissioners or either of them, nor their secretary, clerks, agents, employes or experts, accept, receive or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift or gratuity of any kind from any railroad corporation, and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts or other gratuity, shall work a forfeit of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employe or employes, expert or experts, requesting or accepting the same. Any per-

son violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not more than Five Hundred Dollars, or imprisonment not more than six months, or by both such fine and imprisonment. [Act February 26, 1907, Sec. 31.] (10th Sess. Chap. 37.)

4395. **Annual Reports From Railroads.**—The Board shall require verified annual reports from each and every railroad owning, operating or having any line of railroad in this State, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the Board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the Board. The Board may, at such other times as it may deem necessary, require such other information, statements or reports, as may be deemed necessary, and fix the time for filing of the same. Any railroad failing or refusing to make or file such annual report, or failing or refusing to furnish such additional information, statements or reports, as may be demanded by the Board, shall forfeit the sum of Five Hundred Dollars for each day that such refusal or neglect shall be continued. [Act February 26, 1907, Sec. 32.] (10th Sess. Chap. 37.)

4396. **Annual Report of the Board.**—Said Board shall make and submit to the Governor annual reports containing a full and complete account of the transaction of their office, together with such facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of other departments of the state. The said report shall contain a statement as to the number of accidents investigated by the Board, as herein provided, and the number of persons killed or injured in them, and generally the causes of such accidents. [Act February 26, 1907, Sec. 33.] (10th Sess. Chap. 37.)

4397. **Duties of Board. Suspension of Commissioners.**—It is hereby made the duty of such Board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said Board shall report all such violations, with the facts in their possession, to the Attorney General or

other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all civil causes, original proceedings in the Supreme Court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by Title II, Chapter II, Part II, of the Penal Code, and upon complaint made and good cause shown, the Governor is authorized to suspend any commissioner or commissioners, and if in his judgment, the exigencies of the case require, the Governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension. [Act February 26, 1907, Sec 34.] (10th Sess. Chap. 37.)

4398. **This Act Not to Affect Existing Rights of Action.**— This act shall not have the affect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one, shall not be a bar to the recovery of any other penalty. [Act February 26, 1907, Sec. 35.] (10th Sess. Chap. 37.)

PART III.

EMINENT DOMAIN.

7330. (Sec. 2210.) **Eminent Domain Defined.**—Eminent domain is the right of the state to take private property for public use. This right may be exercised in the manner provided in this Title.

7231. **What Are Public Uses.**—Subject to the provisions of this Title, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the Government of the United States.

2. Public buildings and grounds for the use of the State, and all other public uses authorized by the Legislative Assembly of the State.

3. Public buildings and grounds for the use of any county, city or town, or school district; canals, aqueducts, flumes, ditches, or pipes conducting water, heat or gas for the use of the inhabitants of any county, city, or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets and alleys, and all other public uses for the benefit of any county, city or town, or the inhabitants thereof, which may be authorized by the Legislative Assembly; but the mode of apportioning and collecting the costs of such improvements shall be such as may be provided in the statutes or ordinances by which the same may be authorized.

4. Wharves, docks, piers, chutes, booms, ferries, bridges, of all kinds, private roads, plank and turn-pike roads, railroads, canals, ditches, flumes, aqueducts and pipes for public transportation, supplying mines, mills and smelters for the reduction of ores and farming neighborhoods with water, and drainage and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs, necessary for collecting and storing water.

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines, mills or smelters for the reduction of ores; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines, mills and smelters for the reduction of ores; also an occupancy in common by the owners or the possessors of different mines of any place for the flow, deposits or conduct of tailings or refuse matter from their several mines, mills or smelters for reduction of ores, and sites for reservoirs necessary for collecting and storing water.

6. Private roads leading from highways to residences or farms.

7. Telephone or electric light lines.

8. Telegraph lines.

9. Sewerage of any city, county or town, or any subdivision thereof, whether incorporated or unincorporated, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state or to any college or university.

10. Tramway lines.

11. Electric power lines.

12. Logging railways.

13. Temporary logging roads and banking grounds for the transportation of logs and timber products to public streams, lakes, mills, railroads or highways, for such time as the court or judge may determine, provided, the grounds of State Institutions be excepted. [Act approved February 5, 1907.] (10th Sess. Chap. 4.)

7332. (Sec. 2212.) **What Estates in Land May Be Acquired by Condemnation.**—The following is a classification of the estate and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of debris or tailings of a mine.

2. An easement, when taken for any other use.

3. The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees and timbers as may be necessary for some public use.

7333. (Sec. 2213.) **Private Property Defined. Classes Enumerated.**—The private property which may be taken under this Title, includes:

1. All real property belonging to any person.

2. Lands belonging to this state, or to any county, city or town, not appropriated to some public use.

3. Property appropriated to public use; but such property must not be taken unless for a more necessary public use than that to which it has already been appropriated.

4. Franchises for roads, bridges and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads or other more necessary public uses.

5. All rights of way for any and all the purposes mentioned in Section 7331 (2211), and any and all structure and improvements thereon, and the lands held and used in connection therewith must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

6. All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

7334. (Sec. 2214.) **Facts Necessary to Be Found Before Condemnation.**—Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.

2. That the taking is necessary to such use.

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this Title, as in other cases. Such appeal does not stay any further proceedings under this Title.

7335. (Sec. 2215.) **Parties May Make Location. May Enter to Make Surveys.**—In all cases where land is required for public use, the state, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of Sec. 7340 (2220). The state, or its agents in charge of such public use, may enter upon the land and make examination, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness or malice.

7336. (Sec. 2216.) **Jurisdiction in District Court.**—All proceedings under this Title must be brought in the district court of the county in which the property is situated. They must be commenced by filing a complaint and issuing a summons thereon.

7337. (Sec. 2217.) **The complaint and its contents.**—The complaint must contain:

1. The name of the corporation, association, commission or person in charge of the public use for which the property is sought, who must be styled plaintiff.

2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

3. A statement of the right of the plaintiff.

4. If a right of way be sought, the complaint must show the location, general route and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

5. A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a settlement or town, or county, the county commissioners of the county may be named as plaintiff.

7338. (Sec. 2218.) **Summons, What to Contain. How Issued and Served.**—The clerk must issue a summons which must contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned as prayed for in the complaint. Such summons must, in other particulars, be in form of a summons in a civil action, and must be served in like manner upon each defendant named therein at least ten days previous to the time designated in such notice, for the hearing, and no copy of the complaint need be served. But the failure to make such service upon a defendant does not affect the right to proceed against any or all of the defendants, upon whom service of summons had been made.

7339. (Sec. 2219.) **Who May Defend.**—All persons named in the complaint, in occupation of, or claiming an interest in, any of the property described in the complaint, or in the dam-

ages, for the taking thereof, though not named, may appear, answer or demur, each in respect to his own property or interest.

7340. (Sec. 2220.) **Power of Court to Appoint Commissioners., Etc.**—The Court or judge has power:

1. To regulate and determine the place and manner of making the connections and crossings, and enjoying the common uses mentioned in Subdivision 5, Section 7333 (2213), of this Title, and of the occupying of canyons, passes and defiles, for railroad purposes, as permitted and regulated by the laws of this state, or of the United States.

2. To determine whether or not the use for which the property is sought to be appropriated, is a public use within the meaning of the laws of this State.

3. To limit the amount of property sought to be appropriated, if in the opinion of the court or judge, the quantity sought to be appropriated is not necessary.

4. If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in said county, commissioners to ascertain, and determine the amount to be paid by the plaintiff to each owner or other person interested in such property, as damages, by reason of the appropriation of such property, and specify the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

7341. (Sec. 2221.) **Meeting of Commissioners.**—The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully and impartially discharge the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

1. The value of the property sought to be appropriated, and all improvements thereon, pertaining to the realty, and of each and every separate estate and interest therein; if it consist of

different parcels the value of each parcel and each estate or interest therein must be separately assessed.

2. If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

3. Separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damage assessed under Subdivision 2, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

5. As far as practicable, compensation must be assessed for each source of damage separately.

7342. (Sec. 2222.) **The Date With Respect to Which Compensation Shall Be Assessed, and the Measure Thereof.**—For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected. If an order be made letting the plaintiff into possession, as provided in Sec. 7349 (2229), the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages. [Act approved March 12, 1895.]

7343. (Sec. 2223.) **Report of Commissioners.**—Within thirty days after making their appraisal and the assessment of damages, the commissioners must file a report of their proceedings, accompanied by a map, if a right of way be

sought, showing the route, location, and termini thereof, in the office of the clerk of the court, and the clerk must notify the parties interested, that such report has been filed, which notice must be served upon all the parties interested, in the same manner as a summons.

7344. (Sec. 2224.) **Appeal.**—An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed, by any party interested. Such appeal must be taken within the period of thirty days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the plaintiff or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions, and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners; upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon judgment of such verdict or assessment, together with the interests and costs allowed by law, if any, the right to construct and maintain such railroad or other public work or improvement, and to take, use and appropriate the property described in such verdict or assessment, for the use and purposes for which said land has been condemned, shall as against the parties interested in such verdict or assessment, be and remain in the plaintiff and his or its heirs, successors or assigns, forever. In case the party appealing from the award of commissioners in any proceeding as aforesaid, shall not succeed in increasing the amount of damages finally awarded to him in such proceeding, he shall not recover the costs of such appeal; but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant. Provided, that upon the trial of such appeal, the plaintiff may contest the right of any party or parties thereto, to any of the property mentioned and set forth or involved in said appeal, which was located after the preliminary survey of any such railroad, seeking to condemn its right of way under and pursuant to the provisions of this act. Provided, such condemnation proceedings are begun within one

year after such preliminary survey. [Act approved March 12, 1895.]

7345. (Sec. 2225.) **New Proceedings to Cure Defective Title.**—If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this Title prescribed.

7346. (Sec. 2226.) **Payment of Damages.**—The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before the payment, elect to build the fences and cattle guards, and if he so elect shall execute to the defendant a bond, with sureties to be approved by the court in double the assessed cost of the same, to build such fences and cattle guards within eight months from the time the railroad is built on the land taken, and if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond, the plaintiff may recover reasonable attorney's fees.

7347. (Sec. 2227.) **To Whom Paid.**—Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

7348. (Sec. 2228.) **Final Order of Condemnation, What to Contain; When Filed, Title Vests.**—When payments have been made, and the bond given, if the plaintiff elects to give one, as required by the last two Sections, the court or judge must make a final order of condemnation, which must describe the property condemned, and the purposes of such condemnation. A copy of the order must be filed in the office of the county clerk, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

7349. (Sec. 2229.) **Putting Plaintiff in Possession.**—At any time after the report and assessment of damages of the commissioners has been made and filed in the court, and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiff, shall have power to make an order that upon payment into court

for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation, and that all actions and proceedings against the plaintiff on account thereof be stayed until such time; provided, however, that where an appeal is taken by such defendant, the court or judge may in its or his discretion require the plaintiff, before continuing or taking such possession, in addition to paying into court the amount of damages assessed, to give bond or undertaking, with sufficient sureties, to be approved by the judge and to be in such sum as the court or judge may direct, conditioned to pay defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that the defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses. The amount assessed as damages by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this Section, until re-assessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed, or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property as herein provided, the defendant entitled thereto, if there is no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or concluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute his appeal from such assessment; provided, that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited

shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and, provided, further, that upon any appeal from assessment of damages by the commissioners to a jury, the jury may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners. [Act approved March 12, 1895.]

7350. (Sec. 2230.) **Payment of Costs.**—Costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides, in the discretion of the court. [Act approved March 12, 1895.]

7351. (Sec. 2231.) **Rules of Practice.**—Except as otherwise provided in this Title, the provisions of Part II., of this Code, are applicable to and constitute the rules of practice in the proceedings mentioned in this Title.

7352. (Sec. 2232.) **Private Roads.**—Private roads may be opened in the manner to be prescribed by the Political Code, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount together with the expenses of the proceeding shall be paid by the person to be benefited.

7353. (Sec. 2233.) **Exceptions.**—Nothing in this Code must be construed to abrogate or repeal any statute providing for the taking of property in any city, town or county for road or street purposes.

7354. **Temporary Logging Roads.**—In the event that temporary roads for logging purposes or grounds for banking purposes are opened or taken, the same shall include only the temporary right to use the same and the order of condemnation for said road, shall fix the length of time and the date from which such road shall be opened, or land shall be used and at the expiration of said period so fixed, the right to use said road or land shall cease, and the use of said land shall revert to the party from whom the same is taken, or to his legal successor in interest. Provided that no lands or grounds shall be taken for such temporary logging roads or banking grounds for a period of time longer than five years, and when taken for a period of time exceeding one year the amount of damage for such year shall be fixed separately and the amount

fixed for each particular year must be paid on or before the first day of January of each year, and in the event that the amount so fixed for any one year not paid as herein specified then and in that event, the use of such lands shall revert to the party from whom the same is taken or to his successor in interest. [Act March 5, 1907.] (10th Sess. Chap. 89.)

7355. **Damages to Be Paid Before Land Can Be Used.**—In any suit for the opening of any temporary logging road or for the use of any ground or land for banking purposes, the Court shall not finally order the opening of such road nor the right to use such land or ground until the amount assessed as damages has been paid into Court for the benefit of the party or parties owning or holding such land, and in the event that any such land is occupied by a lessee such lessee shall be made a party to the suit, and the final decree of the Court shall apportion the amount of compensation received, between the lessee and the owner of such lands, such decree being subject to the right of appeal of any party in interest. [Act March 5, 1907.] 10th Sess. Chap. 89.)

PART IV.

Common Carriers in General.

Railroad and General Corporation Laws.

Quo Warranto Actions; Receivers.

Trusts, Combinations and Monopolies.

Frauds in Management of Corporations.

Railroad Laws to Promote Public Health, Safety, General Welfare and Convenience.

Laws Relating to Railroad Equipment and Station Facilities, Platforms, Crossings, Track Connections, Division of Joint Rates, Headlights, Erection of Warehouses on Railroad Right-of-way, Grain Inspection and Weighing.

COMMON CARRIERS IN GENERAL.

5332. (Sec. 2870.) **Common Carrier, What.**—Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

5333. (Sec. 2871.) **Obligation to Accept Freight.**—A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

5334. (Sec. 2872.) **Obligation Not to Give Preference.**—A common carrier must not give preference in time, price or otherwise to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the state, and paid into the common school fund of the said county.

5335. (Sec. 2873.) **What Preferences He Must Give.**—A common carrier must always give preference in time, and may give a preference in price, to the United States and to this state.

5336. (Sec. 2874.) **Starting.**—A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with the carriers on other lines of travel.

5337. (Sec. 2875.) **Compensation.**—A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

5338. (Sec. 2876.) **Obligations of Carrier Altered Only by Agreement.**—The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

5339. (Sec. 2877.) **Certain Agreements Void.**—A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or wilful wrong of himself or his servants.

5340. (Sec. 2878.) **Effect of Written Contract.**—A passenger, consignor, or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

5341. (Sec. 2879.) **When Not Liable for Loss.**—A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he is informed at the time of its receipt of the value of its contents.

RAILROAD CORPORATIONS.

4271. (Sec. 890) **May Construct and Operate Railroads.**—Any railroad corporation shall be authorized to locate, construct, maintain and operate a railroad with a single or double track, with such side tracks, turnouts, machine shops, offices and depots as may be necessary between any points it may select within the places named in the articles of incorporation as termini of such road, and it may construct branches to any point in this state, and connect its road with that belonging to any other person or corporation, and may consolidate with any road not a parallel or competing line.

4272. (Sec. 891.) **Capital Stock.**—The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of one hundred dollars each; such shares shall be regarded as personal property. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments, not exceeding twenty-five per centum on the capital stock, which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

4273. (Sec. 892.) **Sale of Delinquent Stock.**—If any install-

ment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee, or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice by mail within five days after default made, to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence, or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; but where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

4274. (Sec. 893.) **Books to Be Opened for Subscription.**
Election of Directors.—The persons named in said articles of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this state, of the time and place of opening books; and as soon as five per centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place, within the state, as they may designate, for the purpose of electing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were elected, and until their successors are elected and qualified; at the time and place appointed directors shall be elected in the manner provided in Sec. 3835 (436) of this code. After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the non-payment thereof, after the expiration of the thirty days' notice of sale herein-

before provided for. The persons named in such articles, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board and be competent to fill vacancies therein, make by-laws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

4275. (Sec. 894.) **Powers of a Railroad Corporation.**—Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employes may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad.

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road.

4. To lay out its road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment, and to construct and maintain the same, with a single or double track,

and with such appendages and adjuncts as may be necessary for the convenient use of the same.

5. To construct their road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch or flume, which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in title VII., part III., Code of Civil Procedure.

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in title VII., part III., Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation.

8. To carry persons and property on their railroad, and receive tolls or compensation therefor.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight and business.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensa-

tion to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislative assembly at any time.

II. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

4276. (Sec. 895.) **Right of Way in Canyon.**—Any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass or defile, shall not exclude any other such corporaion from a passage through the same upon equitable terms and in case of disagreement upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through the canyon, pass or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by the Code of Civil Procedure, and if it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing

4277. (Sec. 896.) **Survey, Annual Work, and Completion of road.**—Every railroad corporation shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this title, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of corporations hereafter organized. But organization under this chapter shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made, and

if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incomplete portion of its line of road. Each railroad corporation shall complete the whole line of its road within five years from the passage of this chapter, in the case of corporations already organized, and within seven years from the date of filing articles of incorporation in the case of corporations hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in his judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

4278. (Sec. 897.) **Railroads on Reservations.**—Any railroad corporation now or hereafter organized under the laws of this state, for the purpose of building railroads which extend upon Indian or military reservations within this state, shall not forfeit its charter, or any rights or privileges by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized in that behalf, and thereafter the provisions of this chapter shall be applicable to said corporations.

4279. (Sec. 898.) **May Change Location or Grade.**—Whenever any corporation organized under this chapter shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

4280. (Sec. 899.) **May Borrow Money and Secure Payment.**—Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. And

if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held and enforced in the same manner as mortgages upon real estate now are held and enforced.

4281. (Sec. 900.) **May Buy and Sell Necessary Real Estate.**—Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted to aid in the construction of such road, and convey the same in such manner as the directors may prescribe, and all deeds and conveyances made by such corporation shall be signed by the president, under the seal of the corporation.

4282. (Sec. 901.) **May Divert Streams, Etc.**—It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

4283. (Sec. 902.) **Principal Office.**—Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation, and notice to the secretary of state of such establishment or change.

4284. (Sec. 903.) **May Maintain Telegraph Line.**—Any such corporation is hereby authorized to construct, maintain and operate a telegraph line along its road. The provisions of this chapter concerning the grant for station buildings, workshops, depots, machine shops, switches, side tracks, turn-tables, and water stations shall not apply to mineral lands of the United State, or to lands reserved by the United States, nor to any lands as against the United States.

4285. (Sec. 904.) **State not Responsible for Debts of Railroad.**—Nothing in this chapter shall be construed to make the state, or any municipality therein, liable for any debts or obli-

gations of any character which may be contracted by such corporations.

4286. (Sec. 905.) **Liability to Employee.**—In every case the liability of the corporation to a servant or employe acting under the orders of his superior, shall be the same in cases of injury sustained by default or wrongful act of his superior, or to an employe not appointed or controlled by him, as if such servant or employe were a passenger.

4287. (Sec. 906.) **May Increase Capital Stock.**—If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

4288. (Sec. 907.) **May Accept Provisions of Act of Congress.**—Any such corporations may accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

4289. **Regulations.**—If any railroad corporation within this state shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall wilfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this state, or fail to light its track in any City in this State, or shall transport within this state on any of its passenger cars, any oil of vitrol, gun powder, lucifer matches, nitro glycerine, glynon oil, nvtroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated city or town in this state run any train at a rate of speed forbidden by the laws of this state or the ordinances of such city or town, or run any train over any unsafe bridge, trestle work, or aqueduct in this state; or fail to have upon any locomotive in use by it in

this state a bell and steam whistle in fit condition for use thereon; or shall permit any locomotive to approach any highway, road or railroad crossing, without causing the whistle to be sounded, at a point between fifty and eighty rods from the crossing, and the bell to be rung from said point until the crossing is reached; or shall wilfully fail to make any report herein required, or which may be hereafter required by any law of this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for the first offense in the sum of one thousand dollars, and for the second violation of the same provision, two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars. [Act approved March 5th, 1903.] (8th Sess. Chap. 66.)

8562. (Sec. 721.) **Violating Railroad Regulations.**—Every person who violates any of the provisions of Sec. 4289 (908), of the Civil Code, relating to the regulations of railroad companies, must on conviction of any of the offenses therein named be punished by a fine not less than five hundred nor more than ten thousand dollars.

4291. (Sec. 910.) **May Extend Line Into Montana.**—Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose line of railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state, or building any such branch road, or any such continuation, such corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch or continuation in the manner provided in Sections 3818 (403) and 3819 (404), of this code, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the state, who shall record the same when presented for record. Thereupon such corporation shall have all the rights, powers, privileges, immunities, and franchises to make, maintain and operate such extension, and build, maintain and operate such branch or continuation which it would have had if it had been incor-

porated for such purposes, under the general laws of the state or territory of Montana.

4292. (Sec. 911.) **Two or More May Consolidate.**—Any two or more railroad corporations whose respective lines, not being parallel or competing lines, are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, when their respective lines of road or any branch thereof so connect within this state that they may operate together as one property, may consolidate their capital stock, franchises and property, and thereby become one corporation by any name adopted by them, which may be that one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of the corporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation and what officers it shall have, and the persons who shall constitute the first board of directors and officers thereof, their term of office, and the manner in which their successors shall be elected, which shall be according to the provisions of Sec. 3835 (439) of this code, and such other matters as may be deemed necessary to perfect such consolidation and as may be agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such corporations respectively. A duplicate of such articles of agreement, together with a copy of the resolutions so adopted by the stockholders of such corporations assenting to, approving or ratifying the same, certi-

fied under the corporate seal and the signature of the secretary, and verified by a sworn statement of the president and secretary of the corporation, stating that such resolution was duly adopted by the vote in favor thereof of the holders of three-fifths in amount of the outstanding capital stock of the corporation, at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state, and it shall be the duty of the secretary to record the same upon presentation for that purpose; and upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement, and as such shall be perpetual, and shall succeed to and have, own, possess, exercise and enjoy, all the powers, rights, franchises, privileges, immunities and property of every name and nature possessed by the corporations so consolidated, or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess and enjoy, all the powers, rights, franchises, privileges and immunities which may at any time appertain to railroad corporations under the general laws of this state.

4293. (Sec. 912.) **May Lease or Purchase Other Railroads.**—Any railroad corporation whose line is wholly or partly within this state, or reaches the boundary line thereof, whether chartered by or organized under the laws of the state or territory of Montana or the United States, or of any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises and all other property or appurtenances thereo; Provided, the railroad or line of railroad so leased or purchased is continuous of or connected with its own line and not a parallel or competing line. Before any such lease or purchase shall be effectual it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a general or special meeting of such stockholders by the holders of three-fifths in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana or of the United States, or of any other state or territory, may take, purchase, hold, sell and dispose of, or guarantee the pay-

ment of the capital stock, bonds and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line. Leases heretofore made in conformity to the provisions of this chapter shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

4294. (Sec. 913.) **May Issue and Secure Bonds.**—Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate and deliver its bonds, securities or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities or obligations, and the interest thereon, may make, execute and deliver such mortgages or deeds of trust upon all or any part of its property, income and franchises, as the board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose.

4295. (Sec. 914.) **Judgment Against.**—A judgment against any railroad corporation for any injury to person or property, or for material furnished, or work or labor done upon any of the property of such corporation, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any

mortgage or trust deed provided for in this chapter.

4296. (Sec. 920.) **Amendment of Certificate of Incorporation.**—That any corporation heretofore formed, or which may hereafter be formed, under the provisions of chapter twenty-five, of the fifth division of the compiled statutes of Montana, relating to railway corporations may by a majority vote of its board of directors and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing, or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars, to-wit: By more particularly describing the general route of its road, or any part thereof, or by correcting or supplying any defect, mistake or insufficiency in the description thereof, contained in said certificate, by describing any change or changes in its route or any additions or extensions to or of its line of road by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation. [Act approved Feb. 24, 1893.]

4297. (Sec. 921.) **Record of Amendment.**—That a copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company and to have been assented to in writing or by a vote of stockholders representing at least two-thirds of the subscribed capital stock of the company shall be filed with, and recorded by the secretary of state; and a like copy certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated; and from the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers and it and the stockholders thereof shall be subject to the same liabilities, as if such amendment had been embraced in the original articles or certificate of incorporation. [Act approved Feby. 24, 1893.]

4298. (Sec. 922.) **Amended Certificate May Be Amended.**—That said certificate and amended certificate, may be amended in like manner whenever deemed expedient or necessary by

the board of directors and stockholders of the company. [Act approved Feby. 24, 1893.]

4299. (Sec. 923.) **May Lease or Buy Other Railroads.**— Any railroad company now or hereafter incorporated pursuant to the laws of this state, or of the United States or of any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any company owning or operating a railroad within this state may extend the same into any other state or territory, and may build, buy, lease, or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; or any railroad company may sell or lease the whole or any part of its railroad or branches within this state constructed or to be constructed, together with all property and rights, privileges and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state or of any other state or territory of the United States; or any railroad company incorporated or existing under the laws of the United States or of any state or territory of the United States, may extend, construct, maintain and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point, or such extension to any place or places within this state; and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or shall extend or construct its road or any portion or branch thereof in this state, shall possess and may exercise and enjoy, as to the control, management and operation of the said road, and as to the location, construction and operation of any extension or branch thereof, all the rights, powers, privileges and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain. Such purchase, sale, consolidation with or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors

or trustees of the respective companies; but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders meeting or at a special meeting of the stockholders called for that purpose, or by approval in writing of a majority in interest of the stockholders of each company respectively; provided, that nothing in the foregoing provisions shall be held or construed as curtailing the right of this state or the counties through which any such road or roads may be located, to levy and collect taxes upon the same and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject; and all roads or branches thereof in this state, so consolidated with, purchased or leased, or aided or extended into the state, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state, or extending its railroad or any portion thereof into or through this state, shall established and maintain an office or offices in this state at some point or points on its line, at which legal process and notice may be served, as upon railroad corporations of this state; provided further, that before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this act, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation. [Act approved March 4, 1893.]

4300. (Sec. 924.) **Prior Consolidation Legalized.**—Any consolidation by sale or otherwise, or any lease or agreement to sell, consolidate with or lease the whole or any part of any railroad and its branch lines organized under the laws of this state, with the franchise appertaining thereto, to any railroad company organized or existing under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies organized under the laws of the United States or of this state or any other state or territory, and a corporation organized under the laws of this state, heretofore executed by the proper officers of the companies, parties to such sale, lease or consolidation or contract,

is hereby legalized and made in all respects valid and binding from the date of its execution. [Act approved March 4, 1893.]

4301. (Sec. 930.) **Conditional Sale Valid.**—In all cases where railroad equipment and rolling stock may have been, or shall be sold, to any person, firm, or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price, or rent for such property shall have been fully paid, such condition in regard to title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; provided, the term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereafter provided.

4302. (Sec. 931.) **Contract to Be Recorded.**—Such contract shall be recorded in the office of the secretary of state, and in the office of the county clerk of the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been so sold or leased, the name of the vendor, or lessor, or assignee of the vendor or lessor, shall be marked, followed by the word "Owner," or "Lessor," as the case may be.

4303. (Sec. 932.) **Chattel Mortgage.**—Any mortgage of personal property which constitutes the equipment, or part of the equipment, of any railroad company, may be recorded as provided in Sec. 4302 (931), of this chapter, and if the same is bona fide the lien thereby created shall be good for all intents and purposes whatever, for such length of time as there-in provided, not exceeding said period of ten years.

4304. (Sec. 933.) **Satisfaction.**—Upon payment in full of the purchase price and the performance of the terms and conditions stipulated in any such contract, a declaration to that effect shall be made by the vendor, or his assignee, which declaration may be made on the margin of the record of the contract, attested by the secretary of state, or county clerk, as the case may be, or the satisfaction may be made by a separate instrument, which shall be acknowledged and record-

ed in the offices in which the original contract was recorded, and thereupon the secretary of state and county clerk shall write in the margin of the record the word "Satisfied," together with the date of satisfaction, and the page, and book of record of the declaration of the satisfaction.

4305. (Sec. 934.) **Conditional Sale of Equipment.**—In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase-money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase-money and that the title to the property shall not vest in the lessee or bailee until the purchase-price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; provided, that no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice unless:

First: The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgement of deeds, and in the same manner as deeds are acknowledged or proved.

Second: Such instrument shall be filed for record in the office of the secretary of state of this state, and also in the office of the county clerk and recorder in each county of this state in which the line of such railroad or street railway company extends.

Third. Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "Owner" or "Lessor" or "Bailor" as the case may be. [Act approved March 2, 1893.]

4306. (Sec. 935.) **Contract to Be Recorded.**—The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose, and on payment in full of the purchase-money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect, may be made by the vendor, lessor, or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid, and for such services the secretary of state shall be entitled to a fee of fifteen dollars, for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record. [Act approved March 2, 1893.]

4307. (Sec. 936.) **Limitations.**—This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made, may upon compliance with the provisions of this act, be recorded as herein provided. Nor shall it interfere with the provisions of chapter thirty-six of the fifth division of the compiled statutes of this state, so far as to impair any mortgage or rolling-stock or equipment of any railroad therein provided for, or repeal the provisions therein contained, providing for the making of such mortgages. [Act approved March 2, 1893.]

GENERAL CORPORATION LAWS.

165. (Sec. 410.) **Fees of Secretary of State.**—The Secretary of State, for services performed in his office, must charge and collect the following fees:

I. For each copy of any law, resolution or record, or other document or paper on file in his office, twenty cents per folio.

II. For affixing certificate and seal, One Dollar.

III. For issuing each certificate of incorporation and each certificate of increase of capital stock, Three Dollars.

IV. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to \$100,000.00, Fifty Cents per Thousand Dollars.

Additional from \$100,000.00 to \$250,000.00, Forty Cents per Thousand Dollars.

Additional from \$250,000.00 to \$500,000.00, Thirty Cents per Thousand Dollars.

Additional from \$500,000.00 to \$1,000,000.00, Twenty Cents per Thousand Dollars.

Additional over \$1,000,000.00, Ten Cents per Thousand Dollars.

Providing that no fee for filing any articles of incorporation or increase of capital stock shall be less than \$20.00, except religious societies, churches, and organizations for religious purposes, not having a capital stock, and not being organized for the purpose of profit.

V. For issuing each certificate of decrease of capital stock, Three Dollars.

VI. For recording and filing each certificate of decrease of capital stock, Five Dollars.

VII. For issuing each certificate of continuance of corporate existence, Three Dollars.

VIII. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to \$100,000.00, Twenty-five Cents per Thousand Dollars.

Additional from \$100,000.00 to \$250,000.00, twenty cents per Thousand Dollars.

Additional from \$250,000.00 to \$500,000.00, Fifteen Cents per Thousand Dollars.

Additional from \$500,000.00 to \$1,000,000.00, Ten Cents per Thousand Dollars.

Additional over \$1,000,000.00, Five Cents per Thousand Dollars.

IX. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, Three Dollars.

X. For filing each certified copy of charter or articles of incorporation of any foreign corporation, the same fee shall be charged as is provided for in Article IV of this Section, for domestic corporations.

XI. For filing each notice of appointment of agent. Five Dollars.

XII. For filing each annual or semi-annual statement of any foreign corporation, Five Dollars.

XIII. For receiving and recording each official bond, Two Dollars.

XIV. For each commission or other document, signed by the Governor and attested by the Secretary of State (Pardon and Military Commissions excepted), Five Dollars.

XV. For searching the records and archives of the State, One Dollar.

XVI. For filing each trade mark, Three Dollars; and for issuing each certificate of record, One Dollar.

XVII. For recording miscellaneous papers, records, or other documents, for filing, One Dollar; for recording, Twenty Cents per folio.

XVIII. For filing any other paper not otherwise herein provided for, One Dollar for filing and Twenty Cents per folio for recording.

3805. (Sec. 390.) **Corporation Defined.**—A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

3806. (Sec. 391.) **What Are Public and What Private Corporations.**—Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

3807. (Sec. 392.) **Corporations, How Formed.**—Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article.

3809. (Sec. 394.) **Reservation of Power to Repeal.**—Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislative assembly.

6653. (Sec. 881.) **Injunction Order As to Corporation.**—An injunction order to suspend the general and ordinary business of a corporation must not be granted without due notice of the application therefor to the proper officers or managing agent of the corporation, except when the state is a party to the action.

3810. (Sec. 395.) **Corporate Existence Cannot Be Questioned.**—One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground

that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

3811. (Sec. 396.) **Name.**—Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the name is to be deemed so far matter of description, that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

3813. (Sec. 398.) **Record of Change.**—Whenever the name of a corporation is changed, altered or amended under the provisions of this act it shall be the duty of the secretary thereof to certify the same for record to the secretary of state and to the county clerk of the county wherein the principal place of business of such corporation is situated. [Act approved March 2, 1893.]

3814. (Sec. 399.) **Corporate Obligations Not Impaired By Change.**—Nothing in this act contained shall impair or affect any liability or obligation of any corporation whose name is changed, altered or amended hereunder. [Act approved March 2, 1893.]

3815. (Sec. 400.) **How Corporations May Continue Their Existence Under This Code.**—Any corporation formed under the laws of the territory or state of Montana, except those dissolved by the provisions of Sec 393, and still existing, may at any time within the period limited for its duration elect to continue its existence under the provisions of this code applicable thereto. Such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and

thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations restrictions and limitations prescribed thereby.

3816. Existing Corporations Not Affected.—No corporation formed or existing before twelve o'clock noon on the first day of July A. D. 1895 when this code takes affect is or shall be in any manner affected by any of the provisions of Part IV of Division First of this Code, except those provisions which specifically mention and are made applicable to corporations formed and existing before said time, or unless such corporations elect to continue their existence under the provisions of this Code applicable thereto as provided in Sec. 3815 (400) of this Code; but all the laws of the State of Montana in force and applicable to said previously formed and existing corporations at twelve o'clock noon on the said first day of July A. D. 1895, when this Code takes effect, shall continue to apply and govern such previously formed and existing corporations in all respects, as well in relation to their formation and existence as to their operation, management and all other matters and things contained in said laws and relating and applicable to such corporations, and said laws are repealed subject to the provisions of this section. (Act approved March 5th, 1897.] (5th Sess. 231.)

3817. (Sec. 402.) Name of Instrument Creating Corporation.—The instrument by which a private corporation is formed is called "Articles of Incorporation."

3818. (Sec. 403.) Articles of Incorporation, What to Contain.—Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding twenty years.
5. The number of its directors or trustees, which shall not be less than three nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.
6. The amount of its capital stock and the number of shares into which it is divided, and if there be more than one class of stock. created by the Articles of Incorporation, a de-

scription of the different classes with the terms on which the respective classes are created. [Act approved March 7, 1905, Sec. 1.] (9th Sess. Chap. 102.)

7. If there is a capital stock the amount actually subscribed, and by whom.

8. If the stock is assessable it must be so stated.

3819. (Sec. 404.) **Certain Corporations to State Further Facts in Articles.**—The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall state as provided in Sections 4147 (701) and 4148 (702) of this code.

2. And in articles of incorporation of institutions of learning, shall state as provided in Sec. 4223 (752) of this code.

3. And in case of building and loan associations the corporation shall be formed as provided in Sections 4190 et seq., inclusive of this code.

4. In case of religious, benevolent and other like incorporations, the articles of incorporation shall state as provided in Sec. 4226, of this code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, states, territories and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In the case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

3820. (Sec. 405.) **Three or More Persons to Sign and Acknowledge Articles.**—The articles of incorporation must be subscribed by three or more persons, and acknowledged by

each before some officer authorized to take and certify acknowledgments of conveyances of real property.

3821. (Sec. 407.) **Certified Copy of Articles Prima Facie Evidence.**—A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated.

3822. (Sec. 408.) **Who Are Members and Who Are Stockholders of Corporations.**—The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

3823. (Sec. 409.) **Filing Articles of Incorporation.**—No corporation hereafter formed shall purchase, locate, or hold property in any county in this state, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this code file such certified copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed, and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceedings in relation to such property, its rents, issues, or profits, until such articles of incorporation and such certified copy of its articles of incorporation shall be filed at the places directed by the general law and this section; provided, that all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; and provided further, that the said damages may be recovered in

an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

3824. (Sec. 410.) **Stock Issued for Purchase of Property.**—The directors of any corporation may purchase mines, manufactories and other property necessary for its business and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payments under the provisions of Sec 3853 (470) this code; provided, that on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value, full paid stock as above defined; and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock regardless of the actual value of the mine at the time of such purchase. In all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts. [Act approved March 7, 1895.]

3827. (Sec. 413.) **How Change Affected.**—Whenever any company shall decide to call a meeting of stockholders for the purpose of availing itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business or for changing the term of its existence, it shall be the duty of the trustees to publish a notice, signed by a majority of them in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and the length of time for which it is proposed to extend the term of the existence of the corporation; and a vote of at least two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or the extension or

change of its business, or the extension of the terms of its existence as aforesaid, or to enable the company to avail itself of the provisions of this chapter. [Act approved March 2, 1893.]

3828. (Sec. 414.) **Same.**—If, at the time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been cast in favor of increasing or diminishing the amount of the capital stock, or for extending or changing the business, or of extending the term of existence of the corporation as aforesaid, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the time for which the term of the existence of the corporation is extended, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed and recorded as required by Sec. 3825 of this chapter, and when so filed and recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, and the term of the existence of the corporation extended as in said certificate specified, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter, as the case may be. [Act approved March 2, 1893.]

3829. (Sec. 430.) **Adoption of By-Laws, When, How, and by Whom.**—Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is

necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

3830. (Sec. 431.) **Directors, Election of.**—The directors must be elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in Sec. 3829 (430).

3831. (Sec. 432.) **By-Laws, May Provide for What.**—A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings.

2. The number of stockholders or members constituting a quorum.

3. The mode of voting by proxy.

4. The time of the annual election of directors, and the mode and manner of giving notice thereof.

5. The compensation and duties of officers.

6. The manner of election and the tenure of office of all officers other than the directors; and,

7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

3832. (Sec. 433.) **By-Laws Recorded and How Amended.**—All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "Book of By-Laws." and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during the office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting of the stockholders or members, called for that pur-

pose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members, if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws, with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

3833. (Sec. 434.) **How Many and Who to Be Directors.**—The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

3834. (Sec. 435.) **Directors Must Be Elected and By-Laws Adopted at First Meeting.**—At the meeting at which the by-laws are adopted or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

3835. (Sec. 436.) **Election, How Conducted.**—All elections must be by ballot, and every stockholder shall have the right

to vote in person or by proxy the number of shares standing in name, as provided in Sec. 3840 (441) of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

3836. (Sec. 437.) **Organization of Board of Directors, Etc.**—Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

3837. (Sec. 438.) **Dividends to Be Made From Surplus Profits.**—The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon

its dissolution or the expiration of its term of existence.

3838. (Sec. 439.) **Removal of Directors.**—No director shall be removed from office unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in Sec. 3829 (430) of this title, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting.

3839. (Sec. 440.) **Justice of the Peace May Order Meeting, When.**—Whenever, from any cause, there is no person authorized to call or to preside at the meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

3840. (Sec. 441.) **Majority of Stock Must Be Represented.**—At all elections or votes had for any purpose there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholder or members, and

may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of the proceedings of the board of directors.

3841. (Sec. 442.) **Stock of Minors, Etc.**—The shares of stock of an estate of a minor, or person of unsound mind; may be represented by his guardian, and of a deceased person by his executor or administrator.

3842. (Sec. 443.) **Election May Be Postponed.**—If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in Sec. 3838 (439) of this article.

3843. (Sec. (444.) **Complaint As to Elections.**—Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.

3844. (Sec. 445.) **False Certificate, Report or Notice, Officers Liable.**—Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and

severally liable.

3845. (Sec. 446.) **Meeting by Consent Valid.**—When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

3846. (Sec. 447.) **Proceedings at Meeting to be Binding.**—The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

3847. **Meetings of Stockholders and Board of Directors; Where Held.**—The meetings of the stockholders of a corporation must be held at its office or principal place of business in the State of Montana, except as hereinafter provided. The meetings of the Board of Directors or Trustees of all corporations heretofore or hereafter organized under any of the laws of the State of Montana may be held either within or without the State of Montana at such place or places as may be designated by the by-laws of such corporations. In case the meetings of the Board of Directors or Trustees of a corporation shall be held outside of the State of Montana, either the original or full and complete copies or duplicate of all proceedings had at such meeting or meetings certified by the President and Secretary under seal shall be sent to and kept at the principal office or place of business of the corporation in Montana, and shall be part of the records in Montana. The meetings of the stockholders, of all corporations organized in conformity with the requirements of the laws of the United States and of the State of Montana, for the purpose of furnishing water only to its stockholders, called for the purpose of electing Directors, may be held in the several Director Districts of such corporation, at such place in each Director District as may be designated by the Board of Directors, and no share holder shall be permitted to vote at any such share holders' meeting except the meeting held in the Director District as may be fixed by the by-laws of said corporation. [Act approved March 7, 1907.] (10th Sess. Chap. 151.)

3848. (Sec. 449.) **Special Meeting, How Called.**—When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meet-

ings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

3849. (Sec. 450.) **How Corporation May Change Place of Business.**—Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state, and may increase or diminish the number of its trustees or directors; provided, that the number of trustees or directors shall at no time be less than three or more than thirteen. Before either such changes are made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change, or of the intended increase or diminishment of the number of trustees or directors, as the case may be, must be published at least once a week for three successive weeks in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it, or the number to which it is intended to increase or diminish the trustees or directors. [Act approved March 18, 1895.]

3851. (Sec. 452.) **Payment for Subscribed Stock.**—It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, not to exceed twenty per cent, in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

3852. **Resignation of Directors or Officers of Corporations.**—Any director, trustee or other officer of a corporation, may resign his office by delivering to the secretary or president of the corporation, or depositing in the post office, in an envelope securely sealed, with the necessary amount of postage prepaid

thereon, and addressed to the corporation, at its principal place of business, his written resignation, and filing in the office of the clerk and recorder of the county where the principal office or place of business of the said corporation is situated, a duplicate of the said resignation, together with an affidavit of the delivery or mailing of said resignation, as above specified, or an acknowledgement of service thereof and by publishing in two consecutive issues of the official paper of the county where said company may be doing business, a notice of said resignation, and the director, trustee, or other officer shall upon such filing and publication no longer be responsible for any act or default of the corporation, or of the other officers, thereof, occurring after the date of said filing, provided, however, that any director, trustee, or other officer, shall also comply with the by-laws of the corporation relating to resignations of directors or officers. This act shall apply to resident directors of foreign corporations having a place or places of business in this state, as well as to directors and other officers of domestic corporations. [Act approved March 5, 1907.] (10th Sess. Chap. 90.)

3853. (Sec. 470.) **Liability of stockholders.**—The stockholders of every corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in.

3854. (Sec. 471.) **Certificates, How and When Issued.**—All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

3855. **Transfer of Shares. When Title Passes.**—That the delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record

as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred. [Act approved March 7, 1907.] (10th Sess. Chap. 143.)

3856. (Sec. 473.) **Same by Married Woman, and Dividends.**—Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent, or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation owned by her is valid and binding without the signature of her husband, the same as if she were unmarried.

3857. (Sec. 474.) **Non-resident Stockholders, and Bonds.**—When the shares of stock in a corporation are owned by persons residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by the judge of the district court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

3858. (Sec. 475.) **Five Per Cent of Stock May Demand Statement.**—Whenever any person or persons owning five per cent, of the capital stock of any corporation, shall present a written request to the treasurer thereof that they desire a

statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder or said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

3895. (Sec. 476.) **Loans to Stockholders.**—No loan of money shall be made by any corporation to any stockholder therein, and if such loan be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

3861. **Foreign Registry. Proxy.**—Any corporation which shall have issued bearer certificates may establish agencies in other States and in foreign countries whereat holders or bearers of bearer certificates may, under such regulations as the corporation shall prescribe, register and deposit their bearer certificates of stock for voting purposes. Such corporation shall have the right to appoint and prescribe the duties of, fix the compensation and remove at pleasure its agent or agents at such agencies, and also to establish rules and regulations for registering and depositing bearer certificates of stock, and may at any time close up or terminate any such agency. Whenever at any meeting of the stockholders of such corporation for election or other purposes any such agent shall certify to the corporation in such manner as it may prescribe, that there is registered and deposited with him, to be held by him until after the meeting for which such registration and

deposit shall have been made, a bearer certificate or certificates describing each by its face number, number of shares represented and date of issue, and stating when and by whom deposited, the person who shall have made such deposit, may in writing attested by such agent, appoint some suitable person to represent him at such meeting as his proxy and there vote the shares of stock represented by his said bearer certificate or certificates so deposited; and thereupon the person to whom such proxy shall have been given may vote the shares of stock represented by such bearer certificate or certificates in all matters and things upon which votes are cast or had at such meeting. [Act approved March 8th, 1897, Sec. 2.] (5th Sess. 69-70.)

3862. **Notice of Meetings Waived.**—It shall not be necessary for the corporation or its officers or trustees or directors to give any personal notice or notice by mail to holders or bearers of such bearer certificates of any meeting of stockholders for the purpose of electing trustees or directors, or for any other purpose or of any action taken or proposed to be taken by such corporation or its stockholders or its trustees or its directors at any meeting, but such notice may, in every case, be given to such holders or bearers of bearer certificates by publication in a newspaper as now provided by law and shall be valid and binding. Every holder of a bearer certificate shall be held to have waived any notice of any stockholders' meeting for any purpose, or of any action or proposed action for the corporation or its stockholders or trustees or directors except by publication in some newspaper when it is required by law. [Act approved March 8th, 1897, Sec. 3.] (5th Sess. 70.)

3863. **Bearer May Vote.**—Except as herein provided stock or shares of stock represented by a bearer certificate can only be voted or represented by actual production of such bearer certificate at the time of voting or representation and by the bearer thereof. In all cases the actual production of a bearer certificate shall, so far as the corporation is concerned be conclusive evidence of the bearer's right to vote or represent the shares it represents. [Act approved March 8th, 1897, Sec. 4.] (5th Sess. 70.)

3864. **Dividends Payable to Bearer.**—Dividends to holders of bearer certificates shall only be paid to the bearers thereof upon production of such certificates, except where such certi-

ificates of stock have attached to them dividend coupons payable to bearer, in which case dividends may be paid to the bearer of the proper dividend coupon upon its presentation and surrender without the production of the certificate to which such dividend coupons belonged. [Act approved March 8th, 1897, Sec. 5.] (5th Sess. 70-1.)

3865. **Bearer Certificates Convertible Into Registered Certificates.**—Bearer certificates may at any time be converted into registered certificates such as are now provided for by law, upon the request of the bearer of such bearer certificates and the surrender of such bearer certificates to the corporation and the cancellation thereof; and registered certificates may also be converted and exchanged for bearer certificates at the request of the owners of such registered certificates and the surrender and cancellation thereof. [Act approved March 8th, 1897, Sec. 6.] (5th Sess. 71.)

3866. **Corporation May Adopt Necessary By-Laws.**—The corporation may do all acts and adopt all by-laws and resolutions necessary or proper to carry into effect the powers herein granted and to provide for details in the exercise thereof, subject, however, to the provisions of this Act. [Act approved March 8th, 1897, Sec. 7.] (5th Sess. 71.)

Assessment of Stock.

3867. (Sec. 490.) **Directors May Levy Assessment.**—The directors of any corporation formed or existing under the laws of this state, may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

3868. (Sec. 491.) **Limitation.**—No one assessment must exceed five per cent of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

3869. (Sec. 492.) **Levy of Assessment; Unpaid Assessment.**—No assessment must be levied while any portion of a previous one remains unpaid, unless—

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of

collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of Sec. 3868 (491).

3870. (Sec. 493.) **Contents of Order for Assessment.**—Every order levying an assessment must specify the amount thereof when, to whom, and where payable, fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

3871. (Sec. 494.) **Notice of Assessment, Form.**—Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the day (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

3872. (Sec. 495.) **Publication and Service.**—The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place

where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

3873. (Sec. 496.) **Delinquent Notice, Form.**—If any portion of the assessment mentioned in the notice remains, unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)
Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts), and in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

3874. (Sec. 497.) **Contents of notice.**—The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

3875. (Sec. 498.) **How Published.**—The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of the sale.

3876. (Sec. 499.) **Jurisdiction Acquired, How.**—By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described

in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

3877. (Sec. 500.) **Sale to Be at Public Auction.**—On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

3878. (Sec. 501.) **Highest Bidder to Be Purchaser.**—The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

3879. (Sec. 502.) **Corporation May Purchase in Default of Bidder.**—If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

3880. (Sec. 503.) **Disposition of Stock Purchased by Corporation.**—All purchases of its own stock made by any corporation vest the legal title to the same in the corporation and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or a vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining

shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

3881. (Sec. 504.) **Extension of Time of Delinquent Sale.**—The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

3882. (Sec. 505.) **Assessment Shall Not Be Invalidated.**—No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

3883. (Sec. 506.) **Action for Recovery of Stock, Limitation.**—No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

3884. (Sec. 507.) **Affidavits to Be Filed.**—The publication of notice required by this article must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof.

3885. (Sec. 508.) **Waiver of Sale.**—On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board

of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

3886. (Sec. 509.) **To What Corporations Applicable.**—The provisions of this article only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

3887. (Sec. 510.) **Other Corporations May Make Stock Assessable.**—Any corporation whose capital stock is not assessable may, with the consent of three-fourths of its stockholders, in writing, spread upon the records of such corporation, make its stock assessable under the provisions of this article. The board of directors of any corporation, where such corporation desires to avail itself of the provisions of this article, shall file and have recorded in the office of the secretary of state, and of the county clerk of the county where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been made assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this article.

3888. (Sec. 511.) **Stock May Be Made Assessable.**—Any corporation heretofore formed under the laws of this state, may, by and with the consent of the stockholders holding two-thirds of the stock of the company, in writing, spread upon the records of such corporation, render its stock assessable, under the provisions of this chapter. The board of trustees of any corporation heretofore formed under the laws of this state, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the secretary of state and of the county clerk and recorder, where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock has been rendered assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this chapter. [Act approved March 7, 1893.]

3889. (Sec. 520.) **Powers of Corporations.**—Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate, as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated or expressed in the Articles of Incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended Articles of Incorporation shall so provide, no corporation shall create preferred stock. [Act approved March 7, 1905, Sec. 3.] (9th Sess. Chap. 102.)

3890. (Sec. 521.) **Limitation of Powers.**—In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

3891. (Sec. 522.) **Issuing Bills Prohibited.**—No corpora-

tion shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

3892. (Sec. 523.) **Corporations to Organize Within One Year.**—If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney general.

3893. (Sec. 524.) **Consolidation Not to Make Foreign Corporations.**—If any railroad, telegraph, express, or other corporation or company organized under any of the laws of this state, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise as if said consolidation had not taken place.

3894. (Sec. 525.) **Decrease or Increase of Stock or Extending Business, How.**—No corporation shall issue stocks or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. Every corporation may increase or diminish its capital stock, or create or increase its bonded indebtedness, or extend or change its business, subject to the foregoing provision of this section, at a meeting called by the directors for the purpose, as follows:

1. Notice of the time and the place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock and the extension or change proposed in its business, must be personally served on each stockholder resident in the State, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business once a week for six weeks successively.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase, diminution, extension or change, before it can be effectual.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the extension or change of business provided for, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the capital shall be so increased or diminished, or the business so extended or changed, or the bonded indebtedness may be increased accordingly.

3895. (Sec. 526.) **May Acquire Real Property, How Much.**—No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property as provided in the Code of Civil Procedure, title VII., part III.

3897. **Corporation May Sell All of Its Property; Procedure.**—That the Board of Directors or Trustees of any stock corporation organized under the laws of either the Territory or State of Montana, whether before or after the passage of this Act and whether the same is solvent or insolvent, or whether it is a going or prosperous concern or otherwise, shall have power, and upon request of stockholders of the corporation representing at least one-half of the outstanding capital stock, and of record on the books of the company, it shall be their duty to call, by resolution, a meeting of the stockholders of such corporation, appearing as such upon the books of the corporation, for the purpose of considering the question of selling, or disposing of the whole or any part of the property and assets of every kind and description of such corporation. Such meeting shall be held at the principal office or place of busi-

ness of such corporation, and at least thirty days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation. The secretary of the corporation shall make out and deposit in the United States Post Office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation by his name and to his place of residence appearing on said records, and shall make and file this affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the Post Office, as above required, and it shall state the time and place of meeting and that the meeting is to consider and decide upon the question of disposing of, or selling the whole or any part of the property of said corporation. If such meeting is called for the purpose of selling, or disposing of the whole of the property of the corporation, the notice shall so state, but if it is for the purpose of selling or otherwise disposing of only a part of the property of the corporation, the notice shall so state and describe generally what part it is. A similar notice shall also be published, at least once a week for at least four successive weeks preceding the day of the stockholders' meeting, in some newspaper of general circulation published at or near the office or principal place of business of such corporation, or if there is no newspaper published in said place, then the nearest place thereto where a newspaper is published, and said publication shall be proven by affidavit of the publisher or clerk of such newspaper, filed with the Secretary of such corporation. Upon the day appointed for said meeting, if stockholders representing at least two-thirds of the whole number of shares of the capital stock of the corporation then outstanding and of record on the books of the company, appear in person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one of their number chairman and some suitable person secretary. Thereupon, any proposition for the sale or disposition of the whole or any part of the property or assets of the corporation, of every kind or description, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the company, appearing at said meeting in person or by agents or proxies as above provided,

vote in favor of any such proposition, whether proposed by the directors or trustees or not, as the stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation and shall be carried out as such and shall be approved and adopted by the Board of Directors or Trustees. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the number of shares voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred to, by the stockholders meeting, the secretary of the meeting shall make out a true and complete copy of the minutes of the stockholders' meeting, which shall be signed by the chairman of such meeting and attested by said secretary and verified by them and acknowledged as required in the case of the conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the office of the county clerk and recorder of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated, and said record shall impart notice and have the same effect as other instruments required by law to be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein stated, and thereupon, and upon the adoption and approval by the Board of Directors or Trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or their instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, or conveyance of the whole or any part of the property of said corporation authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto. Provided, that nothing contained in this Act shall be deemed to limit

or restrict the powers of the Board of Directors or Trustees of such corporations in relation to the disposition of property or the conduct of business. Provided further, that this Act shall not be so construed as to effect any cases now pending in the courts of this state or of the United States. [Act approved March 7, 1905.] (9th Sess. Chap. 103.)

3898. **Dissolution.**—If a disposition shall be made by sale, as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations. [Act approved March 7, 1905, Sec. 2.] (9th Sess. Chap. 103.)

3899. **Rights of Dissenting Stockholders.**—Any stockholder who shall not, at said stockholders' meeting, have voted for or authorize the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting may, within twenty days after the date of the stockholders' meeting, give written notice to the said corporation that he does not assent thereto and also a like notice to the grantee or vendee, or any agent or representative of such grantee or vendee; provided, that such grantee or vendee, or agent or representative of such grantee or vendee be within the state, and demand payment of the value of his stock, and within ten days after service of said notice he must, or the said corporation, or its grantee or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days' previous notice must be given by the person so applying to the other parties. The notices hereinbefore provided for may be served in the manner provided by law for the service of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of appraisers, occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evi-

dence in relation to the value of the stock of such dissenting stockholder at the time of his dissent and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of said appraisal shall be paid by the corporation or its grantee or vendee. [Act approved March 7, 1905, Sec. 3.] (9th Sess. Chap. 103.)

3900. **Appeal From Appraisalment.**—Either party to the appraisalment and award of such appraisers may, within thirty days from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be re-assessed by a jury in the same manner as appeals are taken and trials had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisalment or award shall become final, the court shall enter judgment in favor of such dissenting stockholders and against the corporation and its grantee or vendee for the amount of said award, with expenses and costs of proceedings and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisalment and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stockholders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all such property; but the claims of all dissenting stockholders for compensation and their several appraisements, awards and judgment, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisements and costs shall have been paid to or collected by such dissenting stockholder or deposited with the clerk of the said court for him, he shall cease to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolution of the stockholders' meeting as herein provided, and the stock of such dissenting stockholders shall thereupon become the property of the party satisfying the said judgment or appraisalment unless otherwise provided for by contract between such corporation and its grantee. [Act approved March 7, 1905, Sec. 4.] (9th Sess. Chap. 103.)

3902. (Sec. 540.) **Records of What, and How Kept.**—All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member or stockholder, to any action or proposed action must be entered in full; and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation.

3903. (Sec. 541.) **Other Records to Be Kept By Corporations for Profit, and Others.**—In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the “Stock and Transfer Book,” in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied, and unpaid, a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

3904. (Sec. 550.) **Chapter and Article May Be Repealed.**—The Legislative Assembly may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

3905. (Sec. 560.) **Proceedings to Disincorporate.**—A corporation is dissolved:

1. By the expiration of the time limited by its charter; or,

2. By a judgment of dissolution, in the manner provided by the Code of Civil Procedure, title VI., part III., and chapter V., of title X., part II.

3. By an act of the Legislative Assembly.

3906. (Sec. 561.) **On Dissolution, Directors to Be Trustees for Creditors.**—Unless other persons are appointed by the court, the directors of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved and have full power to settle the affairs of the corporation, and as such trustees are authorized to execute all grants of real estate owned by such corporation.

3907. (Sec. 562.) **Any Corporation May Extend Its Corporate Existence, How.**—Every corporation formed for a period less than twenty years may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding twenty years from its formation. And every corporation may extend the period of its existence for an additional term not exceeding twenty years, after the expiration of the period for which it was formed, as follows: Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members, or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period.

3908. (Sec. 563.) **Title I., to Apply to All Corporations With Certain Exceptions.**—The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

FOREIGN CORPORATIONS.

4413. **Foreign Corporations Must File Copy of Charter and Statement.**—All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any State, or of the United States, or of any foreign government, shall, before doing business within this State, file in the office of the Secretary of State, and in the office of the County Clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporations, and also a statement, verified by oath of the President and Secretary of such corporation, and attested by a majority of its Board of Directors showing:

1. The name of such corporation and the location of its principal office or place of business without this State; and the location of the place of business or principal office within this State.

2. The amount of capital stock.

3. The amount of its capital stock actually paid in, in money.

4. The amount of its capital stock paid in, in any other way, and in what.

5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof.

6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property. Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its President, Vice-President, or other acting head, and its Secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this State, upon all causes of action arising against it in this State, and that service of process may be made upon some person, a citizen of this State, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.

7. In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing busi-

ness in this State, or of increasing its capital stock, or of continuing its corporate existence. it must within thirty days after the same is adopted by the corporation file a duly authenticated copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the Secretary of State and in the office of the County Clerk of the County where it intends to carry on business; and whenever any such corporation increases its capital stock or continues its corporate existence, it shall pay to the Secretary of State at the time of filing in his office the duly authenticated copy of the certificate thereof, the same fee that is required by law from domestic corporations for filing certificates of increase of capital stock or certificates of corporate existence. Any such corporation failing, neglecting or refusing to file such duly authenticated copies of all alterations, or amendments, of its charter or articles of incorporation, and of all certificates of increase of capital stock or continuance of corporate existence, shall forfeit its right to do business in this State and shall be subject to all the penalties, liabilities and restrictions imposed by law upon foreign corporations for doing business in this State without filing duly authenticated copies of their charters, or articles of incorporation, in the manner required by law; provided, however, that any foreign corporation now doing business in this State and which has altered or amended its charter or articles of incorporation or increased its capital stock, or continued its corporate existence since first filing a duly authenticated copy of its charter or articles of incorporation with the Secretary of State, and which has not already filed a duly authenticated copy of such alterations, amendments, or certificates of increase or continuance, must within ninety days from and after the passage and approval of this Act comply herewith. [Act approved March 9, 1907.] (10th Sess. Chap. 181.)

4414. **Consent of Agent.**—The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the offi-

cer executing it. [Act approved March 9th, 1901, Sec. 2.] (7th Sess. 151.)

4415. Contracts Void If Made Before Compliance With Act.—If any foreign corporation shall attempt or commence to do business in this state without having first filed said statement, certificate and consent, required by this Act, no contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statement, certificate or consent, shall be enforceable by the corporation until the foregoing provisions have been complied with. [Act approved March 9th, 1901, Sec. 3.] (7th Sess. 151.)

4416. Annual Statement.—Every corporation shall annually, and within two months from the first day of April of each year, make a report, which shall be in the same form, and contain the same information as required in the statement mentioned in Section 4413 (1) of this Act, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of state. [Act approved March 9th, 1901, Sec. 4.] (7th Sess. 151.)

4417. Penalty.—Every foreign corporation doing business in this state contrary to the provisions of this Act is guilty of a misdemeanor. [Act approved March 9th, 1901, Sec. 5.] (7th Sess. 151.)

4418. Penalty For Acting As Agent.—Every person who as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor. [Act approved March 9th, 1901, Sec. 6.] (7th Sess. 151.)

4419. Corporations Engaged in Business At Time of Passage of Act.—Any foreign corporation or joint stock company now engaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorporation, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent in compliance with the provisions of Title XI, Part IV, Division I of the Civil Code of Montana shall not be required to comply with the provision of Sections 4413 (1) and 4414 (2) of this Act, provided, that if the agent designated and appointed by such corporation or joint stock company does not now reside in this State, or has resigned, or his

appointment has been revoked, or if he shall hereafter reside out of the State, or resign, or his appointment be revoked, such corporation or joint stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this act.]Act approved March 9th, 1901, Sec. 8.] (7th Sess. 152.)

4420. **Foreign Corporations May Exercise Power of Eminent Domain.**—Any corporation, organized under the laws of any state of the United States, or the laws of the United States, and authorized to engage in business in this state, and engaged in business in this state, may acquire real property as provided in the Code of Civil Procedure, Title VII, Part III, to the same extent, for the same purposes, and in the same manner, as corporations organized under the laws of this state. [Act approved February 20, 1907.] (10th Sess. Chap. 23.)

Chapter 109—(11th Session).

“An Act to make Foreign Corporations and Joint Stock Companies Corporations and Joint Stock Companies of this state for purposes of jurisdiction and to make the stocks and shares of such Corporations and Joint Stock Companies subject to attachment the same as the stocks and shares of Domestic Corporations are now subject to attachment under the laws of this state.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any other state or territory of the United States, or, of the United States, or of any foreign government, and doing business in this state, or which may hereafter engage in business in this state shall be deemed and taken to be corporations of this state for purposes of jurisdiction and, shall be subject to the jurisdiction of the courts of this state, and may sue and be sued therein in the mode and manner that is, or, may be by law directed in the case of corporations created or organized under the laws of this state.

Sec. 2. The stocks or shares of such foreign corporations and joint stock companies, doing business in this state shall be subject to attachment in the same manner as now provided by law in the case of domestic corporations.

Section 3. All Acts and parts of Acts in conflict with this Act are hereby repealed.

Section 4. This Act shall take effect from and after its passage and approval.

Approved March 8, 1909.

Chapter 59.—(11th Session).

“An Act to amend Chapter II, Title II, Part IV, Division I, of the Civil Code of Montana, entitled, ‘Trust Deposit and Security Corporation,’ by adding thereto a section which shall be designated as Section 3942-A of the Revised Codes of Montana of 1907, relating to the status, powers and term of existence of any corporation which has availed itself or attempted to avail itself of the benefits of the amendatory acts referred to in Section 3942 of the Revised Codes of Montana of 1907.”
Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Chapter II, Title II, Part IV, Division I, of the Civil Code of Montana be amended by adding a section thereto after section 3942 to be designated Section 3942-A, reading as follows:

Section 3942-A. Any corporation organized under the act referred to in Section 3942 of the Revised Codes of Montana which has, during the term of its original corporate existence, taken proceedings to avail itself of the benefits of the amendatory act referred to in and of which said Section 3942 is a part, or extended or attempted to extend its business and powers so as to include the powers or any of the powers of corporations organized under said chapter, shall be deemed thereby to have availed itself of the provisions of said amendatory act, provided any such corporation shall within six months from and after the approval of this act by resolution of its board of directors or trustees to be entered in the minutes of the proceedings of said board, elect to accept the benefits hereof. And any such corporation, which elects to accept the benefits hereof, shall be held thereby to have extended the period of its existence for a term of fifty years, including the term for which it was originally incorporated, and if the original term of existence of any corporation hereinbefore referred to shall have expired and such corporation shall have continued to and is now doing business, such corporation is hereby revived and its corporate existence fixed for the term hereinbefore stated. No proceedings by any stockholder of any such corporation or any

person by which shall be brought in question the extension of the period of the existence of such corporation as herein provided shall be maintained unless commenced within six months from and after the passage and approval of this Act.

Section 2. All Acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This Act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1911.

Chapter 94.—(11th Session).

“An Act relating to the Proof of Corporate Existence and providing for the manner of Proving the Corporate Character of any Corporation, domestic or foreign.”

Be it enacted by the Legislative Assembly of the State of Montana.

Sec. 1. The certificate issued by the secretary of state upon the filing of a certified copy of any articles of incorporation, or a certificate issued by such secretary or state auditor, setting forth that any corporation, domestic or foreign, has filed its articles of incorporation in his office as required by law, shall be admitted in evidence in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such corporation and of its right to transact business in this state, excepting in an action prosecuted by the state in the nature of a quo warranto proceeding.

Sec. 3. All Acts and parts of Acts in conflict herewith are hereby repealed.

Sec. 4. This Act shall take effect and be in force from and after its passage and approval.

Approved March 6, 1909.

Chapter 100.—(11th Session).

“An Act to amend Section 3812 of the Revised Codes of Montana, relating to the power of corporations to change the Corporate Name.”

Be it enacted by the Legislative Assembly of the State of Montana.

Sec. 1. That Section 3812 of the Revised Codes of Montana, be and the same is hereby amended to read as follows:

Sec. 3812. That the name of any corporation now organized and existing, or which may hereafter be organized under any of the statutes of this state, relating to corporations may be altered, changed or amended by a vote of the majority of the stockholders of such corporation duly assembled at any regu-

lar meeting or at any special meeting duly called for that purpose, and the name of any corporation not having a capital stock may in like manner be changed or amended by a majority vote of all the trustees or directors of such corporation regularly assembled at any regular meeting or at any special meeting duly called for that purpose.

Sec. 2. That all Acts and parts of Acts in conflict with the provision of this Act are hereby repealed.

Sec. 3. That this Act shall take effect and be in full force after its passage and approval.

Approved March 6, 1909.

Chapter 106.—(11th Session).

“An Act to amend Sections 3808, 3825 and 3826 of the Revised Codes of Montana, of 1907, relating to corporations, and to authorize corporations to acquire, own, hold, mortgage, pledge, and dispose of capital stock, bonds, securities, or other evidences of indebtedness of other corporations.”

Be it enacted by the Legislative Assembly of the State of Montana.

Sec. 1. That Section 3808 of the Revised Codes of Montana, of 1907, (being Section 393 of the Civil Code of Montana of 1895) be and the same is hereby amended to read as follows:

Section 3808. (Sec. 393.) The purposes for which the private corporations mentioned in the last section may be formed are:

1. The support of public worship.
2. The support of any religious, benevolent, charitable, educational or missionary undertaking.
3. The support of any literary or scientific undertaking or the maintenance of a library or the promotion of paintings of music or other fine art.
4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks, and of facilities for skating and other innocent sports.
6. The maintenance of a club for social enjoyment.
7. The maintenance of a public or private cemetery.
8. The prevention and punishment of theft or wilful injuries to property and insurance against such risks.
9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust.

10. The insurance of human beings against sickness or personal injury.
11. The insurance of the lives of domestic animals or their loss or damage.
12. The insurance of property against marine risks.
13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation.
14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe keeping of all kinds of personal property.
15. The construction and maintenance of a railroad and of a telegraph line in connection therewith and a street railroad of any kind.
16. The construction and maintenance of any other species of roads, and of bridges in connection therewith.
17. The construction and maintenance of a bridge.
18. The construction and maintenance of a telegraph line, telephone or electric light line.
19. The establishment and maintenance of a line of stages.
20. The establishment and maintenance of a ferry.
21. The carriage of property and persons by express.
22. The building and navigation of steamboats and carriage of persons and property thereon.
23. The supply of water to the public.
24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.
25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical, or chemical business.
26. The transaction of a printing and publishing business.
27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate.
28. The establishment and maintenance of a hotel.
29. The improvement of the breed of domestic animals by importation, sale or otherwise.
30. The transaction of the business of raising, buying and selling cattle, horses and sheep; or
31. The construction of canals, ditches, flumes, and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells.
32. To purchase or otherwise acquire, own, hold, mortgage,

pledge, sell, assign, transfer, or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidences of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers, and privileges of ownership thereof. Provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the State of Montana. No corporation must be formed for any other purpose than those mentioned in this Section.

Section 2. That Section 3825 of the Revised Codes of Montana, of 1907, (being Section 411 of the Civil Code of Montana,) of 1895, as amended by the Act of the Tenth Legislative Assembly of Montana, approved March 7, 1907, be and the same is hereby amended to read as follows:

Section 3825. Corporations how formed. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying or otherwise disposing of water powers and the sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying or otherwise using or disposing of townsites or towns or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village, or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the development therefor of one or more of the aforesaid branches of business, or for any of the purposes for which private corporations may be formed, as set forth in Section 3808 (393) of this Code, as amended by the foregoing Section, or as the same may be hereafter amended, must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk, with the secretary of state, whereupon the secretary of state must issue to the corporation over the great seal of the state,

a certificate that a copy of the articles, containing the required statement of facts has been filed in his office. Thereupon the persons signing the articles and their associates and successors, shall be a body politic and corporate by the name stated in the certificate, and for a term of forty years, unless in the articles of incorporation otherwise stated, or in this code otherwise specially provided, but in no case where not otherwise specially provided in this code, must such term exceed forty years; provided, however, that no articles of incorporation shall be accepted and filed by the Secretary of State which designate a name for the proposed corporation which is the same as that of any existing domestic corporation, or which in the judgment of the Secretary of State is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations; and provided further, that nothing herein shall effect the present term of existence of any corporation heretofore incorporated under this section for a period of forty years.

Section 3. That Section 3826 of the Revised Codes of Montana of 1907, (being Section 412 of the Civil Code of Montana of 1895.) be and the same is hereby amended to read as follows:

Section 3826 (Sec. 412.) May extend term of existence and increase stock, etc.—Any corporation or company heretofore formed either by special act or under the general law, and now existing, or any company which may be formed under this chapter, or which has elected or may elect to continue its existence under the provisions of the codes of Montana, may increase or diminish its capital stock, by complying with the provisions of this Chapter, to any amount which may be deemed sufficient and proper for the purpose of the corporation, and may also extend its business to any other branch named in Section 3808 (393) or 3825 of this Chapter, as amended by the foregoing section, or as the same may be hereafter amended, and may also extend the term of its existence, subject to the provisions and liabilities of this chapter; provided, however, that no corporation shall have power under this chapter to extend the term of existence for a period longer than will make the terms of existence of said corporation longer in all than forty years from the date of its original incorporation; and before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities

shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under any special act may come under and avail itself of the provisions, and thereupon such company, its officers and stockholders shall be subject to all restrictions, duties and liabilities of this chapter.

Section 4. Any corporation, formed under the laws of the Territory or State of Montana, whether previous to or since the taking effect of the Codes on July 1, 1895 or hereafter to be formed, may purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of shares of the capital stock of, or any bonds, securities or other evidence of indebtedness created by, any other corporation or corporations, wherever formed or organized, and while such owner may exercise all the rights, powers and privileges of ownership, including the right to vote upon such stock; provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this Subdivision mentioned in any case where it is forbidden so to do by any provision of the Constitution or Statutes of the United States of America or the State of Montana.

Sec. 5. All Acts and part of Acts in conflict with the provisions of this Act are hereby repealed. Provided however, that nothing in this Act shall be construed as repealing any of the provisions of House Bill No. 310, passed by the 11th Legislative Assembly, known as the Anti-Trust Bill.

Section 6. This Act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 6, 1909.

Chapter 115.—(12th Session).

“An Act to validate filings heretofore made by corporations, domestic or foreign, in the office of the Secretary of the Territory or State of Montana, and in the offices of County Clerks, of copies of articles of incorporation or of charters or statutes under which such corporations were formed, when such copies are true and correct copies but the same were not duly certified as such by the official custodian thereof in the Territory or State of Montana or in any other State or Territory, and providing for a second filing of such articles, charters, or statutes, and the fees to be paid therefor.”

Be it enacted by the Legislative Assembly of the State of Montana.

Sec. 1. That whenever heretofore any corporation, whether formed under the laws of the Territory or State of Montana or the laws of any other State or Territory, has filed in the office of the Secretary of the Territory or State of Montana, or of the County Clerk of any County in said Territory or State, or of both, any copy of its articles of incorporation, or charter, or of any statute or statutes creating such corporation or defining its powers, in conformity to the requirements of the laws of Montana then in force, which copy was a true and correct copy of its said articles, or of its said charter, or of said statute or statutes, but such copy or copies were not properly, or at all, certified as true and correct by the legal custodian of the original or originals thereof, such uncertified or defectively certified but true and correct copy or copies are hereby accepted, on behalf of the State of Montana as a substantial and satisfactory compliance with the requirements of the laws of Montana then in force and such filings are hereby declared valid and lawful in all respects and for all purposes to the same extent and with the same legal effect as if such true copy or copies had been fully and duly certified, prior to being filed, by the legal custodian of the original or originals thereof; provided that, before any such corporation shall have the benefits of this act and before such defective filings shall be cured, as hereby provided, and become operative as lawful filings from the date of the original filing thereof, such corporation shall, within six months from the date of the final passage of this Act, file in the office of the Secretary of State of the State of Montana and in such other public office or offices as are now designated by law as the place or places where such documents would now be filed if any such corporation were now for the first time making such filings, file a true and correct copy of its said articles, charter or statute or statutes, and all amendments thereof, duly certified as true and correct and complete copies thereof, duly certified as such by the present lawful and official custodian of the originals thereof.

Section 2. That whenever any such corporation as is referred to in the first section hereof shall have complied with the provisions of said section and made the filings thereby required, said corporation shall be deemed, and is hereby declared, to have fully complied with all of the requirements of the laws of the Territory and State of Montana and of the

constitution and laws of the State of Montana, concerning such filings, and is hereby vested with all the rights, privileges and immunities, which would have been enjoyed by it if it had in all respects complied strictly at the time of its first filings with all of the requirements of the law then in force and applicable thereto, all such rights, privileges and immunities being hereby conferred as of the date of the first filings of such true but uncertified copies.

Sec. 3. That upon complying with the provisions of sections 1 and 2 hereof, any such corporation shall be and hereby is released from the payment of any fees, or other charges, to the Secretary of the State of Montana or to any County Clerk of any county in Montana, which may or might have become due under or by reason of the provisions of any other laws of this state; provided, that before the acceptance and filing of said new certified copies by the Secretary of State, a filing fee of \$5.00 shall be paid to him by or on behalf of said corporation and that any county clerk in whose office any such new filings shall be made under the provisions of this Act, shall likewise require to be paid to him, by or on behalf of said corporation, a filing fee of \$1.00.

Sec. 4. All Acts and parts of Acts in conflict herewith or inconsistent with the provisions of this Act are hereby repealed.

Sec. 5. This Act shall take effect from and after the date of its final passage.

Approved March 6th, 1911.

Chapter 140.—(11th Session).

“An Act to amend Section 3850, Revised Codes of Montana, 1907, relating to annual reports of corporations, and exempting state banks, trust companies, and building and loan associations from its requirements.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. That Section 3850, Revised Codes of Montana, 1907, be amended to read as follows:

Section 3850. Every corporation, having a capital stock, except banks, trust companies and building and loan associations, shall annually, within twenty days from and after the thirty-first day of December, file, in the office of the clerk of the county in which the principal place of business of such corporation is situated, a report which shall state the amount of the capital stock, the proportion thereof actually paid in

and the amount thereof actually paid in cash and the amount issued, if any, in payment of property purchased and the amount of existing debts and also the names and addresses of the directors or trustees and of the president, vice-president, general manager and secretary of the corporation. Such report shall be signed by the president and a majority of the directors, inclusive of the president, secretary or treasurer of such corporation. In the absence, or inability to act, of the president, the vice-president may sign and verify such report. If any such corporation shall fail to file such report, directors of the corporation shall be, jointly and severally, liable for all debts or judgments of the corporation then existing, or which may thereafter be in anywise incurred until such report shall be made and filed; provided, however, that if within ten days after such failure a director, or directors, shall make and file, as aforesaid, an affidavit or affidavits, stating that the failure was due to no fault or neglect of his or their, and stating, also that, within the said twenty days, he or they requested the president or sufficient number of the other directors, whose residence was known to the affiants, to join them in making report, such director, or directors, shall not be liable under this section. If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern and has ceased to voluntarily incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for the cessation of the corporate activities of such corporation, and, after two annual reports have been filed, the directors shall not be liable for a failure to file annual reports during such time as the disability of such corporation shall continue.

Sec. 2. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1909.

QUO WARRANTO ACTIONS.

6961. (Sec. 1428.) **When Corporation Has Forfeited Its Rights.**—When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered

or forfeited its corporate rights, privileges, or franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense, or the exercise of such power.

6962. (Sec. 1429.) **Appointment of Trustees, Etc.**—The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who after giving an undertaking, payable to the state, in such sum and with such securities as the court may designate and approve, conditioned that they will faithfully discharge their trust, and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

6963. (Sec. 1430.) **Powers and Duties of Trustees.**—The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations and papers of every description, within the custody, power or control of the officers of the corporation, or either of them belonging to the corporation, or in any wise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities, and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders to the extent of its property and effects which come into their hands.

6964. (Sec. 1431.) **How Trustees Placed in Possession.**—An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them,

in consequence of such neglect or refusal.

6965. (Sec. 1432.) **Attachment for Costs.**—If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation.

6966. (Sec. 1433.) **Actions Have Precedence.**—Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern shall, on the motion of the attorney general, or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

6967. (Sec. 1434.) **Actions in Supreme Court.**—Actions under this chapter, commenced in the supreme court, shall be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court shall have the same authority to issue summons and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial shall be the same as in the district court. If a jury is required to determine an issue of fact, a jury shall be drawn and selected from the jury boxes of the county in which the seat of government is located, and the clerk of the district court of said county must place such jury boxes in the custody of the clerk of the supreme court for that purpose.

6968. (Sec. 1435.) **Effect of Appeal.**—If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases, but if there is a judgment of ouster against the defendant there shall be no stay of execution or proceedings pending such appeal.

RECEIVERS.

6698. (Sec. 950.) **Appointment of Receiver.**—A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the prop-

erty or fund, or the proceeds thereof, is probable and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt.

3. After judgment, to carry the judgment into effect.

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or in proceedings in aid of execution, when an execution has been returned unsatisfied, or when the judgment debtor refuses to apply his property in satisfaction of the judgment.

5. In cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

6699. (Sec. 951.) **Notice of Appointment.**—Notice of an application for the appointment of a receiver, in an action, before judgment therein, must be given to the adverse party, unless he has failed to appear in the action, and the time limited for his appearance has expired; or unless it shall appear to the court that there is immediate danger that the property or fund will be removed beyond the jurisdiction of the court, or lost, materially injured, destroyed or unlawfully disposed of. The word property used in this chapter, includes the rents, profits or other income and the increase of real or personal property.

6700. (Sec. 952.) **Dissolution of Corporation.**—Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

Voluntary Dissolution of Corporations.

7323. (Sec. 2190.) **Corporations, How Dissolved.**—A corporation may be dissolved by the district court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

7324. (Sec. 2191.) **Application, What to Contain.**—The application must be in writing, and must set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members.

2. That all claims and demands against the corporation have been satisfied and discharged.

7325. (Sec. 2192.) **Application, How Signed and Verified.**—The application must be signed by a majority of the board of trustees, directors or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

7326. (Sec. 2193.) **Final Application and Publication of Notice.**—If the court is satisfied that the application is in conformity with this Title, the judge thereof must order it to be filed with the clerk, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county; and if there are none such, then by advertisements posted up in three of the principal public places in the county.

7327. (Sec. 2194.) **Objections May Be Filed.**—At any time before the expiration of the time of publication, any person may file his objections to the application.

7328. (Sec. 2195.) **Hearing of Application.**—After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must declare the corporation dissolved.

7329. (Sec. 2196.) **Judgment Roll and Appeals.**—The application, notices, proof of publication, objections (if there be any) and declaration of dissolution, constitute the judgment roll; and from the judgment an appeal may be taken, as from other judgments of the district court.

TRUSTS, COMBINATIONS AND MONOPOLIES.

8285. (Sec. 321.) **Trusts, Punishment.**—Every person, corporation, stock company or association of persons in this state who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this Section, forfeits to the state all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the state.

8286. (Sec. 322.) **No Other Conspiracies Punishable Criminally.**—No conspiracies other than those enumerated in the preceding sections are punishable criminally.

8287. (Sec. 323.) **Overt Act, When Necessary.**—No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside such agreement, be done to effect the object thereof, by one or more of the parties to the agreement.

8289. (Sec. 325.) **Limitation.**—The provisions of this chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages, nor to persons

engaged in horticulture or agriculture, with a view of enhancing the price of their products.

Chapter 97.—(11th Session.)

An Act relating to Trusts, Monopolies and Unlawful Contracts and Combinations in restraint of trade, commerce, and transportation facilities and fixing the punishment for infractions of the provisions thereof.

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Every person, corporation, stock company or association of persons in this state who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporation or stock companies, foreign or domestic, through their stockholders, directors, officers or in any manner whatever, for the purpose of fixing the price or regulating the production of any articles of commerce,—“The phrase ‘articles of commerce’ as herein employed shall and does include not only those articles which are generally, popularly and legally known as articles of commerce, but also gas, water, waterpower, electric light and electric power for whatever purpose used or employed”—or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or product, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such articles below a common standard or figure or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the county jail for a period not less than twenty-four hours, or more than one year, or by fine not exceeding twenty-five thousand dollars, or both.

Sec. 2. The provisions of this Act do not apply to any arrangements, agreement, or combination between laborers, made with the object of lessening the number of hours of labor or increasing wages.

Sec. 3. No person shall be excused from testifying in any prosecution brought pursuant to the provisions of this Act, but no person testifying for the prosecution shall be punished or prosecuted in any manner whatsoever for any act committed by him personally, as to which he is called upon to testify in a prosecution against any person or corporation, stock company or association.

Sec. 4. All Acts and parts of Acts in conflict with this are hereby repealed.

Sec. 5. This Act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1909.

Frauds in Management of Corporations.

8708. **Fraud in Publishing False Statement of Concern.**—Any person who knowingly makes or publishes, any book, prospectus, notice, report, statement, exhibit or other publication of or concerning the affairs, financial condition or property of any corporation, joint stock association, co-partnership or individual, which said book, prospectus, notice, report, statement, exhibit or other publication, shall contain any material statement which is wilfully and knowingly false so as to give a less or greater apparent value to the shares, bonds or property of said corporation, joint stock association, co-partnership or individual, or any part of said shares, bonds or property, than said shares, bonds or property, or any part thereof, shall really and in fact possess, shall be deemed guilty of a felony, and, upon conviction thereof, shall be imprisoned for not more than ten years, or fined not more than ten thousand (\$10,000.00) dollars, or shall suffer both said fine and imprisonment. [Act approved March 7, 1907.] (10th Sess. Chap. 131.)

8709. (Sec. 980.) **Frauds in Subscriptions for Stock of Corporations.**—Every person who signs the name of a fictitious person to any subscription for, or an agreement to take, stock in any corporation, existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

8710. (Sec. 981.) **Fraudulent Issue of Stock, Scrip, Etc.**—Every officer, agent or other person in the service of any joint

stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either—

1. Sells, pledges or issues, or causes to be sold, pledged or issued, signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which said company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Re-issues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificate, or other evidence of the transfer, or ownership of any such share or shares, is punishable by imprisonment in the state prison not exceeding seven years, or by a fine not exceeding three thousand dollars, or both.

8711. (Sec. 982.) **Frauds in Procuring Organization, Etc., of Corporation.**—Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the state prison not less than three nor more than ten years.

8712. (Sec. 983.) **Unauthorized Use of Name in Prospectus, Etc.**—Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published and thereby to lead persons to believe

that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

8713. (Sec. 984.) **Misconduct of Directors of Stock Corporations.**—Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payments; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such corporation, is guilty of a misdemeanor.

8717. (Sec. 987.) **Frauds in Keeping Accounts in Books of Corporation.**—Every officer, director or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or to direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three nor more than ten years, or by imprisonment

in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both imprisonment and fine.

8718. (Sec. 988.) **Officer of Corporation Publishing False Reports.**—Every director, officer, or agent of any corporation or joint stock association who knowingly concurs in making, publishing or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this Chapter, is guilty of a felony.

8719. (Sec. 989.) **Officer of Corporation to Permit An Inspection.**—Every officer or agent of any corporation, having or keeping an office within this state, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

8720. (Sec. 990.) **Officer of Railroad Company Contracting Debt in Its Behalf Exceeding Its Available Means.**—Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and inclusive of its real estate, is guilty of a misdemeanor.

8721. (Sec. 991.) **Debt Contracted in Violation of the Last Section Not Invalid.**—The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

8722. (Sec. 992.) **Director of a Corporation Presumed to Have Knowledge of Its Affairs.**—Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

8723. (Sec. 993.) **Director Present At Meeting, When Presumed to Have Assented to Proceedings.**—Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

8724. (Sec. 994.) **Director Absent From Meeting, When Presumed to Have Assented to Proceedings.**—Every director of a corporation or joint stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this Chapter occurs, is deemed to have concurred therein if the facts constituting such violation appear on the records or proceedings of the board of directors and he remains a director of the same company for six months thereafter and does not within that time cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

8725. (Sec. 995.) **Foreign Corporations.**—It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another state, government or country, if it was one carrying on business or keeping an office therefor within this state.

8726. (Sec. 996.) **Same.**—Every foreign corporation doing business in this state contrary to the provisions of Title XII., Part IV., Division I., of the Civil Code, is guilty of a misdemeanor.

8727. (Sec. 997.) **Agent of Foreign Corporation.**—Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

8728. (Sec. 998.) **Corporation Not Complying With Laws.**—Every corporation which fails to comply with the provisions of law relating to corporations, as prescribed in the Civil Code is guilty of a misdemeanor.

8729. (Sec. 999.) **Agent of Corporation.**—Every person who acts as an officer, agent or in any other capacity for a corporation which has not complied with the provisions of law as prescribed in the Civil Code, is guilty of a misdemeanor.

8730. (Sec. 1000.) **“Director” Defined.**—The term “direc-

tor," as used in this Chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

LAWS TO PROMOTE PUBLIC HEALTH, SAFETY, GENERAL WELFARE AND CONVENIENCE.

1481. Corporations to Furnish Information When Requested By Board.—In order to afford the better advantage for obtaining knowledge to be incorporated with that collected through special investigations and other sources, all officers of the state, the physician of all incorporated companies, and the president or agent of any company chartered, organized or transacting business under the laws of this state, as far as it is practical, shall furnish to the State Board of Health any information bearing upon public health which may be requested by said board, for the purpose of enabling it better to perform its duties of collecting and distributing useful information on this subject. [Act approved March 6, 1907, Sec. 8]. (10th Sess. Chap. 110.)

1499. Rules and Regulations for Transportation of Dead Bodies.—The State Board of Health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practical, be in conformity with similar rules and regulations now in force in other North American States and Provinces, and to this end they may establish a system of licensing embalmers and undertakers. [Act approved March 6, 1907, Sec. 26.] (10th Sess. Chap. 110.)

1407. Crossing Railroads, Canals or Ditches on Public Lands.—Whenever highways are laid out across railroads, canals, or ditches, on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals or ditches, that the public highway may cross the same without damage or delay and when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal or ditch, no damage must be awarded for the simple right to cross the same. [Act approved March 2, 1903, Sec. 71.] (8th Sess. Chap. 44.)

2427. Construction of Drain Across Railroad Right of Way.—Whenever it is necessary to run a drain across the right of way or road bed of any railroad, the same proceedings shall be had throughout in all respects as in cases provided in this act

for obtaining private lands for the construction of drains, except as hereinafter provided. It shall be the duty of the railroad company when notified by the county drain commissioner so to do, to make and maintain the necessary opening through said road bed, and to build and maintain a suitable culvert. Notice in writing to make such opening, and to construct such culvert, shall be served upon such company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad company, at least thirty days before such railroad company shall become liable. [Act approved March 7, 1905, Art. II, Sec. 16.] (9th Sess. Chap. 106.)

2428. Refusal of Railroad Company to Construct Culvert.—In case such railroad company shall refuse or neglect to comply with the provisions of the preceding section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The county attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of the preceding section shall, upon complaint being made by the county drain commissioner, bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to the final determination in any court having competent jurisdiction. [Act approved March 7, 1905, Art. II, Sec. 17.] (9th Sess. Chap. 106.)

4362. Duty to Construct Drain and Ditches.—It shall be the duty of every corporation, company, or person owning or operating any railroad, or branch thereof, in this state, and of any corporation, company, or person constructing any railroad in this state, within three months after the completion of the same through any county in this state, to cause to be constructed and maintained suitable ditches and drains along each side of the road bed of such road or to construct culverts or openings through such road bed to connect with ditches or drains, or water courses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad; provided that none of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described, except when required to remove and drain off water accumulated upon property adjacent to or upon the right of way whose natural channel or

outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid. And in case such corporation, company or person shall fail or neglect to construct and maintain such ditches or drains as are herein required, within the time limited in this section, the Board of County Commissioners of any county, through which such railroad has been, or may be constructed and located and in which the draining herein required has been neglected, are hereby authorized and required, upon the petition of twenty land owners of such county along the line of and contiguous to such railroad, to cause such ditches or drains as are herein required to be constructed and maintained, and said Board of County Commissioners may maintain an action against such corporation, company or person so failing to comply with the provisions of this section, in any court of competent jurisdiction, in the name of such county, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches. [Act approved March 6, 1903.] (8th Sess. Chap. 101.)

Chapter 144.—(11th Session.)

Sec. 15. Drains may be laid along the line of any railroad within its right of way: Provided, such drain shall not be to the injury of the road bed. Whenever it is proposed to construct a drain along the line, and within the right of way of any railroad, and the company owning or operating such road shall refuse or neglect to permit such drain to be constructed or release the right of way therefor within the time prescribed in this act such release shall be obtained in the same manner as is provided in this act for obtaining private lands: . Provided, that no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners that such drain can equally well be laid on private lands.

Sec. 18. Drains may be laid along and within the limits of or across any public highway: Provided, that when it is proposed to construct a drain in whole or in part along a public highway, it shall be necessary for the county drain commissioner to obtain from the county commissioners a release of right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time prescribed in this act, such release shall be obtained in the

same manner as is provided in this act for obtaining private lands.

Section 19. When any drain crosses a highway, the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of construction of such drain, after which such bridge or culvert shall be maintained as part of the highway. When a drain passes along a highway, there shall be constructed at least one bridge or passageway across such drain connecting the highway with each enclosed field and with each farm house entrance, which bridge or passageway shall be constructed and maintained out of the funds hereinafter provided for the construction and maintenance of such drain.

4310. (Sec. 952.) **Right of Way to Be Kept Clear From Dead Grass.**—It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track, and either side thereof, for a distance of one hundred feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds or any dangerous or combustible material; and any railroad company or corporation failing to keep its railroad track and each side thereof free as above specified, shall be liable for any damages which may occur from fire emanating from operating such railroad, and a neglect to comply with the provisions of this section in keeping free any railroad track, and either side for a distance equal to the space of ground covered by the grant, of the right of way for the railroad corporation or company, shall be prima facie evidence of negligence on the part of any such railroad corporation or company. But no railroad corporation or company shall be required to keep free as above specified any land not a part of its right of way.

4338. **Size and Equipment of Caboose.**—It shall be unlawful for any person, corporation or company operating any railroad or railway in this state to require or permit the use of any caboose cars, unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with suitable water closets, cupolas, platforms, guard rails, grab irons and steps for the safety of persons in alighting or getting on said caboose cars, and said caboose cars shall be equipped with at

least two, four wheel trucks. [Act approved February 28, 1907, Sec. 1.] (10th Sess. Chap. 54.)

4339. **Penalty.**—Any person, corporation or company operating any railroad or railway in this state, violating any of the provisions of Sec. 4338 (1), of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Five Hundred Dollars (\$500.00), nor more than One Thousand Dollars (\$1,000.00), for each offense. [Act approved February 28, 1907, Sec. 2.] (10th Sess. Chap. 54.)

4340. **Telephones Must Be Maintained in Offices of Railroad, telegraph and Express Companies.**—It is hereby made the duty of every railroad, telegraph and express company, doing business in the State of Montana, to install or allow to be installed in its ticket office, public office and freight office, in all cities and towns in this state, where there are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town and to maintain in each of said offices, direct telephone connection with each of such exchanges; but nothing herein contained shall be construed to require said railroad, telegraph or express company to build a telephone line, it being intended to require such company or companies to install or allow to be installed, a telephone in each of its offices where it can be obtained by them as they may be obtained for other business offices in the same vicinity; each railroad, telegraph and express company shall cause to be promptly answered, all calls made over such telephone connection during business hours, provided, however, that such railroad, telegraph and express companies shall not, in the absence of an agreement to the effect, be required to bear the expense incident to the installation of said telephones, or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours, concerning the passenger, freight or telegraph service of such railroad, telegraph or express company. [Act approved March 9, 1907, Sec. 1.] (10th Sess. Chap. 182.)

4341. **“Business Hours” Defined.**—The term “business hours” as used in this Act shall be construed to mean such times as the office or depot of such railroad, telegraph or express company may be open, with an officer or agent of such railroad,

telegraph or express company in charge for the transacting of business. [Act approved March 9, 1907, Sec. 2.] (10th Sess. Chap. 182.)

4342. **Penalty.**—Any railroad, telegraph or express company failing or refusing to comply with the provisions of this Act after its passage and approval by the Governor, shall be deemed guilty of a misdemeanor. [Act approved March 9, 1907, Sec. 3.] (10th Sess. Chap. 182.)

4343. **Duty to Furnish Shipping Facilities.**—It is hereby made the duty of every person, corporation and association operating a railroad in the State of Montana to maintain facilities for shipment and delivery of freight, and to ship and deliver freight and accomodate passengers at any point upon the line of such railway where there is a platted townsite of record having not less than one hundred inhabitants. [Act approved February 21, 1905, Sec. 1.] (9th Sess. Chap. 26.)

4344. **Penalty.**—Any such person, corporation or association which shall within sixty days after written request of not less than fifty inhabitants of such platted townsite fail to comply with the provisions of this Act, shall upon conviction be fined not less than ten dollars nor more than one hundred dollars for each day thereafter, so long as the provisions of this Act are not complied with. [Act approved February 21, 1905, Sec. 2.] (9th Sess. Chap. 26.)

4345. **Duty to Report Delayed Passenger Trains.**—All Railway Corporations operating in the State of Montana, shall, upon the arrival of a delayed passenger train, at the first division terminal, within the confines of this state, notify by telegraph, every station on the line of road within the state, how much the said passenger train is delayed. And upon the arrival of such delayed passenger train, at each succeeding division terminal, it shall be the duty of the dispatcher, or telegraph operator at each of such terminals to notify every telegraph station on the line of road within the state, not yet reached by said train, how late said train is. [Act approved March 5th, 1903, Sec. 1.] (8th Sess. Chap. 65). (See Chapter 105, page 142.)

4346. **Posting Notice of Arrival.**—Every operator, agent or person in charge of the telegraph station, shall post a notice in a conspicuous place in the station or waiting room, and when such telegraph station is connected by telephone with the cen-

tral exchange in any town or city, he shall promptly notify such central exchange, how late the delayed passenger train is running. [Act approved March 5th, 1903, Sec. 2.] (8th Sess. Chap. 65.)

4347. **Penalty for Agent's Neglect.**—Every operator, agent or person in charge of a telegraph station who shall fail, neglect or refuse to post said notice correctly, advise such central telephone exchange shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding twenty-five dollars. [Act approved March 5th, 1903, Sec. 3.] (8th Sess. Chap. 65.)

4348. **Violation By Company. Penalty.**—Any Railway Corporation that shall violate the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one hundred dollars, for each and every offense. [Act approved March 5th, 1903, Sec. 4.] (8th Sess. Chap. 65.)

4355. **Confiscation of Coal by Railroad Prohibited.**—It shall hereafter be unlawful for any person, railway company or common carrier to confiscate or take for his or its own use or for the use of another, any coal or other fuel in transit, except when such coal, or other fuel, is necessary for the preservation of life or property or is required for the moving of trains of such common carrier, provided that in a suit under this Act to recover the penalty and damages the burden of proof shall be on the person, railroad company or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property or was required for the moving of trains of such common carrier. [Act approved March 6, 1907, Sec. 1.] 10th Sess. Chap. 119.)

4356. **Liability of Railroad Company.**—Any person, railroad company or common carrier who shall confiscate or take any coal or fuel either for his or its own use or for the use of another shall be liable to the consignee or owner of such coal, or fuel, in double the value of such coal, or fuel, at the point of shipment, and such other damages as may be caused by the confiscation of such coal. Such liability to be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal, or fuel. But in every case wherein coal or other fuel is taken or used by any such person, railroad company or common carrier, it shall be the

duty of such person, railroad company or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal and to pay and compensate him therefor within thirty days from the time of the taking. [Act approved March 6, 1907, Sec. 2.] (10th Sess. Chap. 119.)

4357. **Penalties for Violation of Act.**—Any person, corporation or common carrier who shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars, nor more than two hundred dollars. [Act approved March 6, 1907, Sec. 3.] (10th Sess. Chap. 119.)

4358. **Obstruction of Highway Crossings By Railroads.**—That it shall hereafter be unlawful for any corporation, association or company, to wilfully obstruct, blockade, interfere with or prevent the free use of any public highway within the State of Montana, where such highway crosses any railroad track outside of incorporated cities and towns, by stopping any railroad train, car, engine or locomotive for more than fifteen minutes at any one time, or by placing, depositing or leaving any article or thing, whatsoever, on any railroad track at the point where any public highway crosses such track outside of incorporated cities, and towns, and any corporation, association or company, so obstructing, blockading or interfering with the free use of any such highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars. This act shall be construed as repealing any existing laws prohibiting encroachments upon, or obstruction of, public highways. [Act approved February 26, 1907]. (10th Sess. Chap. 43.)

4359. **Trains to Come to Full Stop at Grade Crossings.**—That no Railway Company operating trains within this state shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing; provided, however, that if any Railway Company or Companies using one or more tracks crossing each other or connecting, in any way, at a common grade, shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them, or either of them, render it safe to pass over said crossings without stopping, and such plant, works or fixtures shall have been first approved by the County Commissioners of the county wherein such works are

to be constructed and used, and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such Commissioners, then and in that case the foregoing provisions of this section, requiring the stopping of trains at such crossing, shall not apply to said companies, or either of them; and, if said County Commissioners shall disapprove any such plans so filed with them, or fail to approve the same within twenty (20) days after the filing thereof with them, such railway companies, or either of them, may apply, in the county where such crossing is situated, to the district court in and for said county, or to a judge thereof in vacation, by petition in writing setting forth the object of such application, and said court or judge shall, thereupon, appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place together with a copy of said petition, shall be served upon said county commissioners at least ten (10) days before the day appointed for said hearing, and said district court, or judge thereof in vacation, shall have full power upon the hearing of said petition, to grant the prayer thereof, or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section, requiring the stoppage of trains at crossings, shall not apply to said railway companies, or either of them, if said district court shall, by its order upon said petition, grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to. [Act approved February 17th, 1903.] (8th Sess. Chap. 8.)

4360. **Fire Guards.**—That every railroad corporation operating its lines of road or any part thereof within this state, shall, between the fifteenth day of April and the first day of July in the year 1903 and each succeeding year thereafter, plough in a good and workmanlike manner, covering the sod well, upon each side of its line of road, wherever it passes through a range or grazing country, a continuous strip of not less than six feet in width on each side of its track, as a fire-guard, which said strip shall as near as practicable run parallel with the line or lines of said railroad, and in addition to such ploughing, said railroad company shall cause to be burned between the fifteenth day of July and the fifteenth day of September of each year, all the grass and vegetation between the

said ploughed strips and a line of fifty (50) feet inside said ploughed strips; provided that such fire guard so ploughed and burned need not be constructed within the limits of any town, village or city nor in private fields under cultivation nor along the line of such railroad whenever the same runs through the mountains or elsewhere where such ploughing or burning would be impracticable; and provided further, that said fire guard or portion thereof, need not be ploughed or burned on or through any lands which may be released from the operation of this act by the board of county commissioners of the county wherein such land is situated by their written certificate of release filed in the office of the county clerk of the said county; provided further, that said ploughing be not less than three hundred (300) feet from the center of the railroad track on each side of same. Except in cases of cultivated fields and then such ploughing and burning shall be done closer to such railroad but not less than seventy feet from the center of the track. [Act approved March 5th, 1903, Sec. 1.] (8th Sess. Chap. 63.)

4361. **County Commissioners May Plough Guard and Recover Expense.**—That if any railroad company fails to comply with any of the provisions of Section 1 of this Act the board of county commissioners of the county wherein such violation occurs shall cause the neglected ploughing or burning or both therein provided for, to be done, and may in a suit to be brought in their name, as said board, in the District Court having jurisdiction, recover double the amount of the cost of such ploughing or burning or both with reasonable attorney fees to be fixed by the court, and such railroad company shall be liable further for all damages caused by its failure to comply with this act. [Act approved March 5th, Sec. 2.] (8th Sess. Chap. 63.)

8443. (Sec. 632.) **Mismanagement of Steam Boilers.**—Every engineer or other person having charge of any steam boiler, steam engine, or other apparatus for generating or employing steam, used in any manufactory, steamboat, railway, mining, milling or other mechanical works, who wilfully or from ignorance, or gross neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony.

8478. (Sec. 670.) **Death From Explosions, Etc.**—Every

person having charge of a steam boiler or steam engine, or other apparatus for generating or employing steam, used in any manufactory, or on a railroad, or in any vessel, or in any kind of mining, milling or mechanical works, who wilfully, or from ignorance or neglect, creates or allows to be created such an undue quantity of steam as to burst or break the boiler, engine or apparatus, or to cause any other accident, whereby the death of a human being is produced, is punishable by imprisonment in the state prison, for not less than one nor more than ten years.

8479. (Sec. 671.) **Death From Collision on Railroads.**—Every conductor, engineer, brakeman, switchman or other person having charge, wholly or in part, of any railroad car, locomotive or train, who wilfully or negligently suffers or causes the same to collide with another car, locomotive or train, or with any other object or thing, whereby the death of a human being is produced, is punishable by imprisonment in the state prison for not less than one nor more than ten years.

8521. (Sec. 690.) **Intoxication of Engineers, Conductors or Drivers of Locomotives or Cars.**—Every person who is intoxicated while in charge of a locomotive engine, or while as conductor or driver upon any railroad car or train, whether propelled by steam or otherwise, or while acting as train dispatcher, or as telegraph operator receiving or transmitting dispatches, in relation to the movement of trains, is guilty of a misdemeanor.

8522. (Sec. 691.) **Placing Passenger Cars in Front of Freight Cars.**—Every person who, in making up or running railroad trains, places or runs, causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor; and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car" as used in this Section does not include a baggage, express or mail car.

8523. (Sec. 692.) **Violation of Duty by Employes of Railroad Companies.**—Every engineer, conductor, brakeman, switchtender or other officer, agent, or servant of any railroad company, who is guilty of any wilfull violation or omission of his duty as such officer, agent or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

8524. (Sec. 693.) **Violation of Duty By Railroads.**—Every person or corporation who owns, carries on or has control of a railroad and fails to observe any of the regulations or requirements or perform any of the duties prescribed by law in reference to railroads, the penalty for which is not otherwise provided for in this Code, is punishable by a fine not exceeding five thousand dollars.

8547. (Sec. 709.) **Storage of Explosives in Cities, Etc.**—No person, company or corporation, shall store, deposit or keep, within one mile of the limits of any city, town or village, any powder, gunpowder, giant or hercules powder, or other highly explosive substance, in greater quantities than one hundred pounds, or more than one thousand giant caps, at any one time, nor shall such explosives be stored, deposited or kept in any quantities whatever within one mile of such city, town or village, except in a magazine constructed as hereinafter described. Provided, that this section shall not be construed to prevent any person, company or corporation, operating a mine within one mile of the limits of such city, town or village, from storing powder for use in such mine in the manner prescribed in Sections 8546 (708) and 8548 (710) of this Act. Provided also, that this Section shall not prevent the keeping of a reasonable amount of gunpowder, not exceeding fifty pounds, in a safe place for sale. [Act approved March 15, 1895.]

8548. (Sec. 710.) **Construction and Location of Magazines.**—It shall be unlawful to store, deposit or keep, any powder, gunpowder, giant or hercules powder, giant caps or other highly explosive substance, in amounts exceeding one hundred pounds, elsewhere than in storehouses or magazines constructed as follows:

The wall of such storehouses and magazines shall be constructed entirely of stone or brick. There shall be no opening in such magazine except necessary ventilation, and one entrance not exceeding thirty inches in width. There shall be two doors to such entrance, an outer door opening outward and an inner door opening inward. The said door shall be of plank not less than two inches in thickness, and both doors shall be entirely covered with one-eighth inch iron, and shall be hinged upon two or more iron hooks securely anchored in the walls of such magazine. Both said doors shall be kept securely locked at all times when powder is stored therein,

except when it is necessary to store therein or remove therefrom such powder or other explosives. Such storage room or magazine shall be well and securely roofed with fire proof and bullet proof material. Such magazine shall not be constructed within less than one-fourth of a mile of any human habitation except by the permission of the county commissioners, nor shall any magazine constructed within one mile of the limits of any city, town or village be constructed within one hundred feet of any building owned by any other person. [Act approved March 15, 1895.]

8549. (Sec. 711.) **Magazines, Etc., to Bear Warning Signs.**—Every storehouse or magazine constructed as provided in the foregoing section, in which shall be stored, deposited or kept, any powder, gunpowder, giant or hercules powder, giant caps, or other highly explosive substance, shall at all times have posted above the entrance thereof a sign-board on which shall be painted in conspicuous letters not less than four inches in length the words, "Explosives—Dangerous." Every dray, wagon, freight car, or other vehicle in which shall be transported, transferred, or delivered any of the said explosives, shall bear on each side thereof a similar sign with conspicuous letters not less than two inches in length. [Act approved March 15, 1895.]

8550. **Transportation of Explosives.**—It shall be unlawful to knowingly transport or deliver or cause to be delivered giant, or Hercules powder, giant caps, nitro-glycerine, nitro-leum, blasting or nitrated oil, or powder mixed therewith or fibre saturated therewith, or any other highly explosive substance in any quantities whatever on any vessel or vehicle whatever carrying passengers by land or water between any points within the State of Montana: Provided, that on mixed trains intended for service on railroad lines leading to mining localities or camps the aforesaid explosive substances or any of them may be lawfully carried, by hanging a placard on each side of the car or cars carrying the explosives, reading thus: "This car is loaded with Powder"—each letter of said placard to be at least two inches long, but this proviso shall not permit the carrying of any of said explosive substances in the same car or coach in which the passengers are carried. [Act approved March 6th, 1897.] (5th Sess. 246-7).

8551. (Sec. 713.) **Careless Use of Explosives.**—Every person who shall recklessly or maliciously use, handle, or have in

his or her possession any blasting powder, giant or hercules powder, giant caps or other highly explosive substance, whereby any human being is intimidated, terrified, or endangered, shall be guilty of a misdemeanor. [Act approved March 15, 1895.]

8552. (Sec. 714.) **Penalties.**—Any person, or association of persons, violating any of the provisions of this Act, shall be punished by imprisonment in the penitentiary not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [Act approved March 15, 1895.]

8553. (Sec. 715.) **Penalty When Death Caused by Violation of This Act.**—When the death of any person is caused by the explosion of any powder, gunpowder, giant or hercules powder, giant caps, or other highly explosive substance, that has been stored, kept, handled or transported, contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives, or who may have knowingly or negligently permitted their agents, servants or employees, to so unlawfully store, keep, handle or transport the same, shall be guilty of manslaughter, and on conviction, shall be punished by imprisonment in the state penitentiary for a period not exceeding ten years. [Act approved March 15, 1895.]

8554. (Sec. 716.) **Sales of Explosives After Dark.**—No person, or persons, shall store, or keep in any store, warehouse, or any other building within the limits of any unincorporated town or village, more than five thousand giant caps at any one time, or any coal oil, kerosene or petroleum, exceeding sixty gallons, other than in original packages, within the limits of the said unincorporated town or village, or shall sell, lend, barter or dispose of, deliver or receive the same, or any or either of the said articles or materials, in the Section herein enumerated, after dark, by the aid of any lamp, lantern, candle, match or other artificial light, except electric light. [Act approved March 8, 1893.]

8737. (Sec. 1032.) **Injuries to Milestones and Guideboards.**—Every person who maliciously removes or injures any mile-board, post or stone, or guide-post or any inscription on such, erected upon any highway, is guilty of a misdemeanor.

8738. (Sec. 1033.) **Injuries to Telegraph Lines.**—Every person who maliciously takes down, removes, injures or ob-

structs any line of telegraph, telephone or electric light, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

8740. Interferences With Railroad Property.—Every person who, within the State of Montana, wilfully and maliciously either:

a. Burns, breaks, cuts, derails, destroys, displaces, injures, obstructs, removes or places any explosive substance upon, in or under, any track, switch, bridge, culvert, viaduct, road-bed, embankment, reservoir, water-tank, standpipe or appurtenances, station or section house, coal dock, passenger, mail, baggage, express or freight car, caboose, engine, tender or other rolling stock, or other appliance, part, structure or fixture attached to, or used in connection with, any operated railway, or any branch thereof, lying wholly or partially within this state, whether operated by steam or other motive power; or by letter or other writing, threatens to do, any of the foregoing acts or things; or

b. Wrecks, whether by the use of dynamite or other explosive or any other means, any moving train, engine, cars or other rolling stock of any such railroad or branch; or

c. By intimidating any member of a train or engine crew, or any passenger, or otherwise stops, holds up, or interrupts the journey of any such train, engine, cars or rolling stock, of any such railway, or branch thereof, for the purpose of gaining from any person, by any means, any money or other thing of value; shall be deemed guilty of felony, and on conviction be punished by imprisonment in the State Prison, for a term not less than five years, and which may extend to the term of his natural life. [Act approved February 18, 1905, Sec. 1.] (9th Sess. Chap. 24.)

8741. Punishment.—Any person who wilfully and maliciously attempts to commit any of the acts in Sec. 8740 (1) of this Act enumerated, shall be deemed guilty of a felony, and punished by imprisonment in the State Prison for not less than one year nor more than ten years. [Act approved February 18, 1905, Sec. 2] (9th Sess. Chap. 24.)

8742. Acts Causing Death Punished As Murder.—If in the commission, or attempts to commit, any of the acts made felonies under Sec. 8740 (1) of this Act, the death of any person shall be caused, the person so committing, or attempting to commit said acts or any thereof, shall be deemed guilty of

murder in the first degree; and, on conviction thereof, shall suffer death. [Act approved February 18, 1905, Sec. 3.] (9th Sess. Chap. 24.)

8744. **Remove Waste or Packing From Locomotives or Motors.**—That if any person shall wilfully and maliciously take or remove the waste or packing or brass or brasses from any journal box or boxes of any locomotive, engine, tender, carriage, coach, car, caboose or truck, used or operated or capable of being used or operated upon any railroad, hoisting engines, threshing machines, pumps or any other machinery, whether the same be operated by steam or electricity, the person so offending shall be guilty of a misdemeanor and on conviction shall be sentenced to pay a fine of not more than \$100 nor less than \$50, or by imprisonment in the county jail not more than six months, or both such fine and imprisonment. [Act approved March 3rd, 1903.] (8th Sess. Chap. 46.)

8865. (Sec. 1191.) **Driving Cattle on Railroad.**—Every person who wilfully drives any animal upon any railroad track with intent to injure the corporation or persons owning the railroad, and such animal is killed or injured thereby, is punishable by imprisonment in the state prison not exceeding five years.

8867. (Sec. 1193.) **Diseased Animals.**—It is unlawful for any person having in charge any horse, mule, ass, sheep, hog, or cattle, affected with a contagious disease, to allow such animal to run on any range or to be within any enclosure where they may come in contact with any other animal not so diseased. All animals so affected must be immediately removed to an inside inclosure secure from other animals, or must be herded six miles away from any farm or ranch or from any other stock running at large or being herded. Every person who neglects or refuses to remove, or inclose, or herd as aforesaid, such diseased animals, is guilty of a misdemeanor and liable in damages to the party injured.

8873. (Sec. 1199.) **Landholders to Destroy Thistles.**—In case any person or persons, railroad or other corporation, owning or occupying any lands within this state, under his or her or their control, as the case may be, shall refuse or neglect to destroy any Canada, Scotch bull or Russian thistle or thistles growing or standing upon any land or lands so owned, occupied or controlled, on or before the fifteenth day of August it shall be the duty of the county commissioners, road super-

visors, or other person or persons having control of the public highways, streets or alleys where any such thistle or thistles may be found growing or standing, to immediately destroy or cause the same to be destroyed, and pay therefor at the same rate that is paid for road labor; and every supervisor or other person hereinbefore authorized to destroy said thistles shall keep a correct account of all moneys paid out for that purpose, and charge the same to the person or persons or corporation owning, occupying or controlling the land or lands upon which such thistle or thistles were destroyed, and the person or persons or corporation owning, occupying or having control of such lands shall be liable in a civil action for the amount so charged against them and costs of suit; Provided, that if any supervisor or other person having, under the authority of this Act, destroyed any of the said thistles, and is unable to find the owner of the land, or is unable to collect such money, the same shall be paid by the authorities of the town, village, city or county where such thistles were destroyed; and provided further, that in case any railroad company becomes chargeable under the provisions of this Section, the supervisors of the township where same has become chargeable may certify to the same to the county attorney of their county, whose duty it shall be to bring and prosecute a civil action against the railroad company for the amount so charged and costs of suit aforesaid. [Act approved March 18, 1895.]

8882. Stealing Rides Upon Cars or Locomotives.—It shall be and hereby is declared to be a misdemeanor for any person to enter upon, ride upon, or secure passage upon, any railroad car or locomotive or tender, of any description, other than a car used exclusively for the carriage of passengers, with intent thereby to obtain a ride without payment therefor, or fraudulently obtain carriage upon any such car, locomotive or tender. [Act February 24, 1899, Sec. 1.] (6th Sess. 150.)

8883. Stealing Rides on Trucks, Rods or Brakebeams.—It shall be and is hereby declared to be misdemeanor for any person excepting railroad employes in the performance of their duty, to take passage or ride upon, or enter for the purpose of taking passage or riding upon, the trucks, rods, brakebeams, or any part of any car, locomotive, or tender not ordinarily and customarily used, or intended for the resting place of a person riding upon or operating the same. [Act February

24, 1899, Sec. 2.] (6th Sess. 150.)

8884. **Trainmen Constituted Peace Officers.**—Every conductor, engineer or other person in charge of the operation of cars or trains, or locomotives, upon any railroad, are, while so engaged or employed, hereby constituted public executive officers, of the class of peace officers, and of the grade of a constable in each county wherein their train or car, or cars, or locomotives may from time to time happen to be, and are hereby given the same authority as other peace officers to with or without a warrant arrest and prosecute persons violating any provision of this act, provided, however, that the persons mentioned herein shall not be entitled to receive fees for any arrest or prosecution which may be made or prosecuted under this act. And provided further, that none of the persons herein named shall be authorized to hold said office or exercise its functions unless at the time he shall be a citizen of the United States, and shall have been a citizen of this state for at least one year next preceding his exercising the functions thereof. [Act approved February 24, 1899, Sec. 3.] (6th Sess. 150-1.)

Chapter 18.—(11th Session.)

“An Act requiring any person, railway corporation or company operating a line of railway in the State of Montana to equip its locomotive engines with electric headlights of not less than 1500 candle power without the aid of a reflector, or other headlights of not less than 1500 candle power without the aid of a reflector, and providing a penalty for the violation of this Act.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. It shall be the duty of any person, corporation or company operating any railroad or railway in this state, within one year after the passage of this act, to equip all locomotive engines used in the transportation of trains over said railroad or railway with electric headlights of not less than fifteen-hundred (1500) candle power measured without the aid of a reflector, or other headlights of not less than fifteen hundred (1500) candle power measured without the aid of a reflector. Provided, that this act shall not apply to locomotive engines regularly used in the switching of trains.

Sec. 2. Any person, corporation or company operating any railroad or railway in this state violating the provisions of Section 1, of this act shall be deemed guilty of a misdemeanor

and, upon conviction thereof, shall be fined not less than one hundred (\$100.00) dollars nor more than one thousand (\$1000.00) dollars for each offense.

Section 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Approved February 16th, 1909.

Chapter 136:—(11th Session).

An Act to regulate Common Carriers, and to provide for certain appliances, rules and regulations looking to the safety of the traveling public and employes upon railroad trains, and to confer upon the Railroad Commission of Montana certain powers in relation thereto.

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. I. The Railroad Commission of the State of Montana shall have full authority to, after notice and hearing, make and enforce rules and regulations providing for the installation on and equipment of, trains, cars or engines, with safety appliances and shall have authority to inspect the same and enforce regulations with regard thereto, such inspection rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to, the provisions of the acts of Congress and rules and regulations of the Interstate Commerce Commission as then effective.

Sec. II. The Railroad Commission of the State of Montana shall have the power and authority to examine and inspect all brakes and brake equipment and, to, after notice and hearing make and enforce reasonable rules and regulations with respect to the examination, inspection and repair thereof, with a view of determining the proper measure of efficiency of said brakes and brake equipment. Such rules and regulations to be from time to time co-extensive with the requirements of, and in conformity to the provisions of the Acts of Congress and rules and regulations of the Interstate Commerce Commission as then effective.

Sec. III. The Railroad Commission of the State of Montana shall have power and authority whenever the line of one railroad shall cross or intersect the railroad of another company or corporation to, after notice and hearing, order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, bag-

gage or freight, whenever the same shall be ordered by the railroad commission. And such company or corporation shall, when so ordered by the railroad commission keep such passenger station warmed, lighted and opened to the ingress and egress of all passengers, a reasonable time before the arrival and after the departure of such trains as accommodate such station carrying passengers on such railroad or railroads. And said railroad companies crossing or intersecting shall stop such trains at said station house so located at said crossing or intersection for the transfer of baggage, passengers and freight so as to furnish reasonable facilities for that character of a station when so ordered by the railroad commission and the expense and construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the railroad commission. Such corporations connecting by intersections as aforesaid shall also, when so ordered, after notice and hearing, by the railroad commission unite and connect the tracks of said several corporations so as to permit the transfer from the track of one corporation to the other, of loaded or unloaded cars designed for transportation on both roads, provided however that no such union or connection shall be ordered except where and when necessary to properly serve the public. (Note: See Chapter 105, page 144.)

Sec. IV. The Railroad Commission of the State of Montana shall have full power and authority to, after notice and hearing, compel railroad companies operating in the State of Montana to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities, provided however, that any such industrial or commercial spur will not exceed one mile in length from headlock to end of track, and shall be constructed pursuant to the usual and customary contract of the particular railroad company in constructing such spurs, and provided further, that such industrial or commercial spur shall not be ordered constructed except within the limits of extreme switches of stations or yards, or at sidings unless such station, yards, sidings or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main line operation. (Note: See Chapter 105, page 144.)

Section V. The district court shall have jurisdiction to enforce by proper decree, injunction or order, the rulings, orders and regulations made or established by the commission under the provisions of this act. The proceeding therefore shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad is violating or refusing to comply with any rule, order or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show, by clear and satisfactory evidence that the rule, order or regulation involved is unreasonable and unjust as to them. If in such action, it be the decision of the court that the rule, regulation or order is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation or order, by the defendant, and its officers, agents, servants and employes, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants or employes of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding one thousand dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation or order shall be modified or vacated by the board. Provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

Sec. 6. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence

over all other business, except criminal business, and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

Sec. VII. Any railroad may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation or order of the board is applicable, against the said board as defendant, to determine whether or not any such rule, regulation or order made, fixed or established by the board under provisions of this act is just and reasonable; provided, that until the final decision in any such action the rule, regulation or order of the board affecting any railroad shall be deemed to be final and conclusive; and provided, further, that in action, hearing or proceeding in any court, the rules, regulations and orders made, fixed and established by said board shall prima facie be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section, shall be fixed and assessed as by the court may seem just and equitable.

Sec. VIII. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. IX. This act shall be in full force and effect from and after its passage and approval.

Approved March 10, 1909.

Chapter 115.—(13th Session).

“An act imposing further duties upon the Board of Railroad Commissioners in respect to the inspection of railroads and their equipment and operation, with a view to safe-guarding the lives of persons engaged in the operation of trains.”

Be it enacted by the Legislative Assembly of the State of Montana.

Sec. 1. It is hereby made the duty of the Board of Railroad Commissioners to make inquiry into the observance by all railroads within this state of the laws of the United States and of the State of Montana intended to safeguard the lives of employes of persons or corporations engaged in operating the same and to lay complaint before the proper officer, state or federal, of any infraction of any such laws and to prosecute before the proper court or tribunal any person guilty of violation of the penal provisions thereof.

Sec. 2. Said board shall, in its annual report, set out what effort it has made to carry out the provisions of this act with the results thereof, and in detail what steps it has taken to pro-

cure to be prosecuted any violations of any such acts of which it has secured information.

Sec. 3. This act shall take effect and be in force from and after its passage and approval.

Approved March 17, 1913.

Chapter 105.—(11th Session).

“An act to require railway corporations, operators, agents or persons in charge of railroad, telegraph, or telephone stations to report delayed trains, prescribing the method thereof, and providing penalties.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. All railway corporations operating in the State of Montana upon the arrival of all passenger trains, at the first open telegraph or telephone station within the state shall report by telegraph or telephone stations within the State of Montana, at least 4 hours in advance of said train, to all stations on the route thereof at which said train is scheduled to stop, and to all railway telegraph or telephone stations located on branch lines over which there is a regular train carrying passengers, and which is scheduled to connect with the train first above referred to, whether the train is on time or late, and if the latter, the number of hours and minutes the said train is behind its advertised schedule.

Section II. No further report will be required relative to such train unless it shall gain time or shall become later than first reported, to the extent of thirty minutes, in which event every such additional thirty minutes delayed, or make up in time, must be reported to stations ahead at which such train is scheduled to stop either by telegraph or by telephone, at least five hours in advance of the arrival time of said train.

Sec. III. Every operator, agent or person in charge of any telegraph or telephone station shall post a notice in a conspicuous place in the station or waiting room showing such report on any such train, and when such station is connected by telephone with the central exchange in any town or city, he or she shall promptly notify such central exchange if the train is on time, or if late, the extent of loss of time.

Sec. IV. Any railway or railroad corporation, operator, agent or person in charge of the telegraph or telephone station who shall fail, neglect or refuse to post said notice correctly, or advise such central exchange shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined

for each offense not less than twenty-five and not more than two hundred dollars.

Sec. V. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. VI. This act shall be in full force and effect from and after its passage and approval.

Approved March 6, 1909.

Chapter 53.—(12th Session).

“An act to prevent drinking of intoxicating liquors upon passenger trains, extending police power to conductors and prescribing penalties.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Any person who shall drink any intoxicating liquors publicly as a beverage upon any train carrying passengers, except in the buffet, sleeping or dining cars, or who shall be intoxicated upon any such trains operated upon any railroad in the State of Montana, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding five hundred (\$500.00) dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Sec. 2. Police power is conferred hereby upon every conductor of a railroad company engaged in operating trains upon lines of railway in Montana, and it shall be the duty of every conductor while upon duty upon any train or car used for the conveyance of passengers, to arrest every person who shall in his presence, or to his knowledge, violate the provisions of Section 1 of this act, and to deliver him or them to a policeman, constable, sheriff or other peace officer at any station where such officer may be found, and it shall be the duty of such officer to make complaint against said person or persons and a complaint made on information and belief of said officer shall be sufficient.

Sec. 3. That any justice of the peace in any county through which said train shall pass, or on any division of such railroad, shall have jurisdiction of said offense.

Sec. 4. It shall be the duty of every railway company, operating in this state, to post conspicuously in each passenger car such extracts from this act as shall in the judgment of the Board of Railroad Commissioners be necessary to advise the public of the existence of this act.

Sec.5. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 6. This act shall be in full force and effect sixty (60) days from and after its passage and approval.

Approved February 25, 1911.

Chapter 105.—(13th Session).

“An act to regulate Common Carriers, and to provide for certain rules and regulations looking to the safety and convenience of the traveling public and shippers upon railroad or railway trains; to compel the installation of suitable platforms and station houses, and to order the construction of connecting tracks where the line of one railroad or railway crosses, intersects or parallels (overhead, at grade, or otherwise), the line or lines of another railroad or railway; to provide for the apportionment of joint freight rates; to compel the construction or extension of public loading or unloading tracks, and stock yards, stock chutes or stock pens; and conferring upon the Board of Railroad Commissioners of the State of Montana, certain powers in relation to all the foregoing, giving the district court the power to enforce the rulings of the commission; giving both parties the right of trial by jury and appeals, and providing a penalty for the violation of this act.”

Sec. 1. The Board of Railroad Commissioners of the State of Montana shall have power and authority in addition to all other powers hereafter vested in said board, whenever the line of one railroad, or railway shall cross, intersect or parallel, (overhead, at grade, or otherwise), the railroad or railway of another company or corporation, after notice and hearing, to order and compel the installation of suitable platforms and station houses for the convenience of passengers desiring to transfer from one road to the other and for the transfer of passengers, baggage or freight, whenever the same shall be ordered by the board of railroad commissioners. And such company or corporation shall, when so ordered by the board of railroad commissioners, keep such passenger station warmed, lighted and opened to the ingress and egress of all passengers a reasonable time before the arrival and after the departure of such trains as accommodate such station, carrying passengers on such railroad or railway. And said railroad or railway companies crossing, intersecting or paralleling, (overhead, at grade, or otherwise), shall stop such trains at said station house so

located for the transfer of baggage, passengers and freight, so as to furnish reasonable facilities for that character of a station when so ordered by the board of railroad commissioners, and the expense and construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to agree, as may be fixed by order of the board of railroad commissioners. Such corporation connecting by crossing, intersecting or paralleling, (overhead, at grade, or otherwise), shall also when so ordered, after notice and hearing by the board of railroad commissioners, unite and connect the track of said several corporations so as to permit the transfer from the tracks of said several corporations to the tracks of each other, of loaded and unloaded cars designed for transportation on both roads, provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public. The expense of construction and maintenance shall be apportioned, and the material to be used and the route to be followed shall be determined by such corporations as they may agree, and in the event that they fail to agree, as may be fixed by order of the board of railroad commissioners, and the expense thus incurred by the board of railroad commissioners shall be paid by the railroad or railway companies jointly interested, on such basis as the commission may order.

“Paralleling,” as referred to in this act, shall be held to mean where the main tracks of parallel lines of railroad or railway are not more than two thousand (2,000) feet apart when measured from center to center.

Sec. 2. Whenever the board of railroad commissioners of the State of Montana shall have established a joint rate for the transportation of freight carried over two or more connecting lines of railroad, railway or common carrier, the railroads, railways, or common carriers affected by such joint rate may by agreement provide for the distribution thereof between themselves, and in the event that the railroads, railways or common carriers affected by such rates shall fail to agree upon the distribution of such rate for a period of sixty days after the order fixing and determining such joint rate shall have been made by the board of railroad commissioners, then the said board of railroad commissioners shall have power and it is hereby made its duty to call a hearing of which hearing, railroads, railways, or common carriers affected by such joint

rate shall have at least twenty days' notice and upon such hearing the board of railroad commissioners shall proceed to fix and determine the pro rata distribution of such joint rate between the railroads, railways, or common carriers affected thereby.

Sec. 3. The board of railroad commissioners of the State of Montana shall have full power and authority after notice and hearing, to compel railroads, railways, or common carriers operating within the State of Montana to construct or extend public loading or unloading tracks at stations, and shall likewise have full power and authority to compel the construction or extension of stock yards, stock chutes, or stock pens, whenever the necessity therefor has been established to the satisfaction of the commission.

Sec. 4. The district court shall have jurisdiction to enforce by proper decree, injunction or order, the rulings, orders and regulations made or established by the commission under the provisions of this act. The proceedings therefor, shall be by equitable action in the name of the state, and shall be instituted by the attorney general or county attorney, whenever advised by the board that any railroad, railway, or common carrier is violating or refusing to comply with any rule, order or regulation made by the commission and applicable to such railroad, railway or common carrier. Such proceedings shall have precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order or regulation involved is unreasonable and unjust as to him. If in such action, it be the decision of the court that the rule, regulation or order is not unreasonable or unjust and that in refusing compliance therewith, the railway, railroad, or common carrier is thereby failing or omitting the performance of any duty or obligation the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation or order by the defendant, and its officers, agents, servants, and employees, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant, officer, agent, servant or servants or employees of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punished by a fine not exceeding one thousand dollars for each offense, or

by imprisonment of the person guilty of contempt, until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation or order shall be modified or vacated by the board of railroad commissioners, provided, however, that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the constitution of the United States, or as provided by the constitution of this state. An appeal shall lie to the supreme court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the supreme court.

Sec. 5. Appeals may be taken to the supreme court from the judgment of any district court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business, and original proceedings in such court, and shall be heard and determined as are appeals in civil actions.

Sec. 6. Any railroad, railway, or common carrier may bring an action in the district court of the county where the principal office or place of business is situated, or in any county where any such rule, regulation or order of the board of railroad commissioners is applicable, against the said board as defendant, to determine whether or not any such rule, regulation or order made, fixed or established by said board under provisions of this act is just and reasonable, provided, that until the final decision in any such action, the rule, regulation or order of said board affecting any railroad, railway, or common carrier shall be deemed to be final and conclusive; and provided, further, that in any action, hearing or proceeding in any court the rules, regulations and orders made, fixed and established by said board shall prima facie be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section shall be fixed and assessed as by the court may seem just and equitable.

Sec. 7. Any railroad or railway company, or common carrier, its officers or agents, subject to the provisions of this act, who shall refuse or fail to comply with the provisions of this act or any order, rule or regulation relative thereto, made by the board of railroad commissioners, shall be subject to a fine of not less than twenty-five dollars (\$25.00), nor more than

fifty (\$50.00), and each day of such refusal or failure shall be deemed a separate offense and be subject to the penalty herein prescribed, such fine to be recovered in a civil action upon complaint of the board of railroad commissioners in any court of competent jurisdiction.

Sec. 8. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 9. This act shall be in full force and effect from and after its passage and approval.

Approved March 15, 1913.

Chapter 18.—(13th Session).

An act to require railroad companies to maintain suitable crossings at the intersection of public roads with any line of track of such railroad company.

Sec. 1. That at every point in the State of Montana, outside of incorporated cities or towns, where a public road, lawfully established, now crosses or hereafter crosses any line of track owned by any railroad company of any kind, such railroad company shall maintain, in good condition, a crossing built of plank, cement, concrete, brick or other suitable material, which crossing must be so constructed as that the surface of the portion thereof between the rails of such track shall be flush with the top of the rails of such track, and shall maintain in good condition suitable approaches to such crossings so that such approaches and crossings shall present to the wheels of vehicles crossing the same an even and continuous surface without break, except such as may be necessary on the inner sides of the rails of such track to accommodate the flanges of the wheels of cars or locomotives passing over such track or tracks.

Section 2. All railroad companies owning a line or lines of track within the State of Montana shall have until sixty (60) days after the passage and approval of this act in which to place all approaches and crossings at the intersections of public roads with their respective lines of track in the condition required by this act, and in case of any railroads hereafter constructed and in case of public roads, hereafter established across any line or lines of track, the owner or owners of such track or tracks shall have sixty (60) days from and after notice of the establishment of such crossings in which to comply with the provisions of section 1 hereof.

Sec. 3. Any railroad company failing to comply with the provisions of this act or failing to repair any crossings which shall have become defective after the same have been erected in compliance with the provisions of this act, within thirty (30) days after receipt of notice of such defective condition, shall pay to the State of Montana a fine of ten dollars (\$10.00) per day for every day during which it shall fail to comply with the provisions hereof after the expiration of the time for compliance allowed by this act.

Sec. 4. The Board of Railroad Commissioners of the State of Montana is hereby given the authority to enforce the provisions of this act, but the county attorneys of the respective counties shall also have authority to institute and prosecute proceedings for the violation of this act as to any crossings within their respective counties.

Sec. 5. This act shall be in full force and effect from and after its passage and approval.

Approved February 14, 1913.

Chapter 26.—(13th Session).

“An act relating to the erection of platforms by railroads.”
Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Every railroad company doing business in this state shall within sixty days after notice from the Board of Railroad Commissioners of the State of Montana erect one or more platforms for the transfer of livestock, grain and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company after receiving notice as provided for in this section shall fail, refuse or neglect to erect platforms as required by this and the following section within the required sixty days, the said Board of Railroad Commissioners are authorized and empowered and it is made their duty to notify such railroad company to appear before them at a certain time and place and show cause, if any there is, why such board of railroad commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The said board of railroad commissioners shall have power, after such hearing, to issue an order upon said railroad company commanding it to erect such platforms, if the said board of railroad commissioners shall upon such examina-

tion and hearing deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the State of Montana.

Sec. 2. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the said board of railroad commissioners above the rails of the track with suitable approaches to and from such platform to admit of the driving of loaded teams thereon.

Sec. 3. The Board of Railroad Commissioners shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platforms is in their judgment clearly insufficient for the accommodation of the public.

Sec. 4. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes.

Sec. 5. Every railroad company neglecting or refusing to comply with the requirements of this act shall be deemed guilty of a misdemeanor and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid.

Sec. 6. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 7. This act shall be in full force and effect from and after its passage and approval.

Approved February 15, 1913.

Chapter 43.—(13th Session).

“An act providing a summary method for procuring the right to erect a grain ware-house or grain elevator on railroad rights of way.”

Be it enacted by the Legislative Assembly of the State of Montana :

Sec. 1. Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain (including flax seed) for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which such

person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain such warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railroad at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in such application, and for reasonable compensation for such warehouse or elevator as aforesaid upon the right of way pertaining to such railway at such siding or station and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. Provided, however, that if the person, firm or corporation owning, leasing or operating the railroad is not willing that the portion of the right of way selected by the applicant should be appropriated for such purpose and the parties cannot agree as to the quantity and location of the land upon which such grain warehouse or grain elevator shall be erected the matter shall be determined by the district court in the same manner and by the same proceeding for determining the amount of compensation to be paid where the parties cannot agree as to the amount.

Sec. 2. The application provided in Section 1 of this act shall also state the amount the applicant deems reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the District Court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse, under the provisions of this article to within thirty days after the receipt of such application notify said

applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired and in case such person, firm or corporation fails to notify the applicant within said thirty days, such person, firm or corporation shall be deemed to have accepted said amount and upon the payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for.

Sec. 3. Proceedings in the District Court shall be instituted and carried on as follows: The parties seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath, specifying and describing the right, privilege and easement sought, and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition, and thereupon it shall be at once the duty of the court by its order in writing to fix a time, not more than thirty days thereafter within which the said person, firm or corporation so owning, managing or controlling such railroad shall appear and join issue in said proceeding; such notice shall be served as a summons is served in civil actions, and shall be ample notice to the parties so served to appear and join in the proceedings, and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceeding. The manner of joining issue and the procedure at the trial shall be the same as that in any other civil action at law. The trial of such issue shall be expedited by the court as much as possible. At the trial the court or jury, as the case may be, shall find and assess the compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made, the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by said party, then the other party to the proceedings may make such election, and after election is made, as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found, or the annual rental found, yearly in advance, as the case may be, the party insti-

tuting the proceedings shall be entitled to the right, privilege and easement of erecting and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. In case the annual rental is elected, the same shall be paid yearly in advance, and if not so paid after thirty days' default, the right, privilege and easement aforesaid shall be absolutely forfeited.

Section 4. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the Supreme Court; but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court in an amount double the gross sum or annual rental, conditioned to pay such sum or annual rental and to abide and satisfy any judgment the Supreme Court may render in the premises. Costs and disbursements, as in civil actions, in each court, shall be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party. But if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. Either party may appeal from that part of the judgment determining the quantity and location of the land upon which such warehouse or elevator is to be erected, and in the event of such appeal the judgment shall be suspended pending the appeal.

Sec. 5. All elevators and warehouses erected and maintained under the provisions of this article, shall be deemed public elevators, and public warehouses, and shall be subject to legislative control.

Sec. 6. Any person, firm or corporation availing themselves of the provisions of this Act, shall, within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court commence the erection of the warehouse or elevator mentioned

in the application, and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section, such person or persons shall be deemed to have abandoned the right acquired, and the part or portion of the railroad right of way described in the application shall be, subject to selection by other applicants who may desire to avail themselves of the provisions of this act.

Sec. 7. Every railroad company or corporation organized under the laws of this state, or doing business therein, shall, upon application in writing provide reasonable sidetrack facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, the reasonable cost of the construction of such side tracks and connections, except the cost of the rails and fastenings, shall be paid by the person or persons for whose benefit such side tracks are provided or connections made; provided, further, that such elevators and warehouses shall not be constructed within one hundred feet of any existing structure, and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart, the railroad company, when required so to do by the Board of Railroad Commissioners of the State of Montana shall construct and maintain a side track for the use of shippers between such stations.

Sec. 8. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its passage and approval.

Approved March 1, 1913.

Chapter 65.—(13th Session.)

“An act to require railroads to maintain more than one crossing where highways or streets intersect said railroads in unincorporated cities, villages and towns of more than three hundred (300) inhabitants, and to provide crossings over public highways in certain instances in the country districts; and to compel the Board of Railroad Commissioners of the State of Montana to see that the provisions of this act are enforced and to punish railroads for any violation of this act.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. It is hereby made the duty of all railroads owning, operating or using railway tracks within the State of Montana to make and maintain good and safe crossings at all places where their main lines, spurs and switches intersect or cross public highways, and also to make and maintain such crossings at more than one place in all cities, towns and villages of more than three hundred (300) inhabitants whether same are incorporated or not incorporated towns.

Sec. 2. Whenever a petition for a crossing is signed by at least one-half of the business men residing in any town, city, or village of more than three hundred inhabitants, shall be presented to such railroad, a copy thereof shall be sent to the Board of Railroad Commissioners of the State of Montana and unless said railroad shall construct said crossing within a reasonable time, not exceeding sixty days from date of presentation of said petition it shall be the duty of said board to investigate the facts, and if said crossing is necessary it may enforce the provisions of this act by appropriate proceedings in a summary manner;

And in case crossings are ordered by the Board of County Commissioners at intersections on highways in the country districts as herein provided for, they, the board of county commissioners, may notify the State Board of Railroad Commissioners of the State of Montana, by a notice containing a description of the public highway together with a description of the kind of crossing desired and it shall thereupon be the duty of said State Board of Railroad Commissioners to enforce the provisions of this act by appropriate proceedings in a summary manner.

Sec. 3. Any railroad that fails or neglects to comply with the provisions of this act, on conviction thereof in a court of

competent jurisdiction, shall be fined in a sum not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense and nothing herein provided shall exempt a railroad from being liable in damages to persons or property injured at such crossings, either before or after notice to construct same.

Sec. 4. All acts and parts of acts contrary to the provisions of this act are hereby repealed.

Sec. 5. This act shall be in force and effect thirty days after its passage and approval.

Approved March 8, 1913.

Chapter 47.—(13th Session.)

“An act relating to grain elevators, grain warehouses and grain inspection in the State of Montana and elsewhere; fixing fees to be collected as incidental to the main purpose of the bill as aforesaid and appropriating money to carry forward said main purpose, to-wit: the creation of a grain inspection department in the state.”

Be it enacted by the Legislative Assembly of the State of Montana:

(Note: Sections that have been eliminated herein are not pertinent in this publication).

Sec. 3. It shall be the duty of the chief inspector to have general supervision of the inspection and weighing of grain, as required by this act, or the laws of the state, to supervise the handling, inspecting, weighing and storage of grain; to establish necessary rules and regulations therefor, and for the management of the public warehouses of the State, subject to the approval of the Governor, as such rules and regulations may be necessary to enforce the provisions of this act, or any laws of this state in regard to the same; to keep proper records of all the inspecting and weighing done into and out of warehouses licensed by law to do business in this state, for which purpose he shall have provided books, blanks and other materials needed in order to keep perfect and proper records. He shall investigate all complaints of fraud or oppression in the grain trade and correct the same, so far as may be in his power.

Sec. 5. The chief inspector shall be authorized to recommend to the Governor a suitable person as supervising inspector in each city, town or place in the state where one or more public warehouses may be doing business under the law, whose duty it shall be to visit at reasonable times the elevators and

railroad tracks, supervising all inspections, with a view to securing uniform inspection of grain. The chief inspector is also authorized to recommend to the Governor a suitable person as supervising weighmaster in each city, town or place in the state where one or more public warehouses may be doing business under the law, whose duty it shall be to visit at reasonable intervals the elevators and railroad tracks, supervising all weighmasters, inspecting scales, and the loading and unloading of grain, with a view to securing correct weights on all grain weighed by the department. The chief inspector is also authorized to recommend to the governor suitable and qualified persons as assistant inspectors, and assistant weighmasters, who shall not be interested in any public or private grain warehouse or in the buying or selling of grain, either directly or indirectly, and also such other employees as may be necessary to properly conduct the business of his office; and the Governor is hereby authorized to make such appointments, if found by him to be necessary, and not otherwise.

Sec. 8. The fees collectible shall be as follows: For inspecting and sampling each car load of grain; for inspecting out of elevators; for weighing into warehouses, mills or elevators; for weighing out grain that has been previously weighed by the state, where certificates are required; for weighing out where no certificates are required; not to exceed one dollar per carload of grain in any instance; for re-inspecting where the former inspection and grade are sustained, not to exceed one dollar per car; and in all cases where extra samples of car lots of grain inspected are demanded, the charge per each sample shall be twenty-five cents. Provided, further, that whenever track scales are furnished by the elevator or warehouseman suitable for weighing all grain in carload lots, all grain delivered to such elevator or warehouse shall be weighed by the state grain inspection department before the seal of the car in which it is loaded is broken; and thereupon such grain shall be tested, inspected and graded; and after the grain has been removed from such car, the car, shall, by the department, be inspected, and again weighed. The name and postoffice address of the consignor of such car, when known to the department, shall within ten hours after inspecting such grain, be mailed or delivered to the consignor, with a statement of the gross weight of such carload of grain, the

total net weight of such grain, the test weight per bushel, and the grade of such grain; and for each car so inspected and weighed on such track scales so provided by the elevator or warehouseman, the fee for the weighing into the warehouse, mill or elevator, shall not exceed one dollar per car. It is further provided that all grain loaded for shipment shall be weighed at the first track scale enroute, where there is a deputy grain inspector, under the supervision of such grain inspector; the said grain inspector shall issue a certificate to the shipper, and shall attach a duplicate thereof to the way bill, which certificate, or the duplicate thereof, shall be prima facie evidence of the amount of grain loaded in the car, in all the courts of this state; fees for such weighing and certificate shall not exceed one dollar per car. The fees collectible where not definitely fixed herein shall be fixed by the chief grain inspector with the approval of the Governor and may be changed and adjusted from time to time as necessity requires.

Sec. 9. The charge for inspection and weighing of grain shall be a lien on the grain so inspected and weighed, and whenever such grain is in transit, the said charges shall be treated as advanced charges and shall be collected and paid by the common carrier in whose possession the same is at the time of such inspection and weighing.

Sec. 18. All elevators and warehouses located in the state in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of the different lots or parcels cannot be accurately preserved, and doing business for a compensation, are hereby declared public warehouses, and the person, firms, associations, or corporations operating or owning the same, or any other person or persons who buy or sell grain in carload lots for shipment are public warehousemen.

Sec. 21. Any person who shall transact the business of a public warehouseman, without first procuring a license and filing such bond as hereinbefore provided, or who shall continue to transact any such business after such license has been revoked (save only that he shall be permitted to deliver property previously stored in such warehouse) shall be deemed guilty of a misdemeanor.

Sec. 23. Upon the application of the owner or consignee of grain stored in any public warehouse, the same being accompanied by evidence that all transportation and other charges

which might be a lien upon the grain, including the charge for freight, inspection and weighing, having been paid, the warehouseman shall issue to the person entitled to receive it, warehouse receipt therefor, subject to the order of the owner or consignee of it, which receipt shall bear date corresponding with the date of receipt of the grain for storage, and shall state upon its face the quality and respective grade of grain, and that the grain mentioned in it has been received in store, to be stored with grain of the same grade by inspection, and that the grain mentioned therein is deliverable upon the return of the receipt properly endorsed by the person to whose order it was issued, and the payment of the proper charges for storage and handling.

Section 30. All persons owning property or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property shall at all times during ordinary business hours, be at liberty to examine any and all property stored in any public warehouse, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants for an examination. All scales used for weighing shall be subject to examination and test by any duly authorized inspector, weighmaster or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been, or is to be weighed on such scales, and the fee for such test shall be paid by the parties making such demand, if the scales are found correct, and by the warehouse proprietor if found incorrect. Any warehouse continuing to use scales found to be in imperfect or incorrect condition by such examination and test, until the same shall have been pronounced correct and properly sealed, shall be guilty of a misdemeanor.

Sec. 31. In case any owner or consignee of grain for which a warehouse receipt has not been delivered shall be dissatisfied with the inspection or grade of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into public warehouse (whether the property may have been previously consigned to such warehouse or not) by giving notice to the person or corporation in possession thereof, and such grain may be withheld from going into store and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice; the grain in rail-

road cars to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession. . Provided, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to receive his grain shall be guilty of conversion and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any public warehouse into which it would otherwise have been delivered, and if after such notice it be taken into store in such warehouse, the owner or manager thereof shall be liable to the owner of such grain for double its value.

Sec. 32. It shall be unlawful for any owner, lessee, or manager of any public warehouse or any public warehouseman to enter into any contract, agreement, understanding or combination with any railroad company, or other corporation, or any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any purpose contrary to the directions of the owner, his agent or consignee, and such unlawful act is hereby declared to be a misdemeanor.

Sec. 39. The Governor shall by proclamation establish points in this state where grain inspection shall take place, as many as he deems necessary.

Approved March 1, 1913.

PART V.

LAWS RELATING TO RIGHTS AND DUTIES OF
EMPLOYEES; HOURS OF LABOR; LIABILITY
PROVISIONS.

Chapter 21.—(11th Session).

“An act to amend Section 1736 of the Revised Codes of 1907, relating to hours of labor.”

Be it enacted by the Legislative Assembly of the State of Montana :

Sec. 1. That Section 1736 of the Revised Codes of 1907 be, and the same is hereby amended to read as follows:

Section 1736.

The period of employment of working men in all underground mines or workings, including railroad or other tunnels, shall be eight (8) hours per day, except in cases of emergency where life and property is in imminent danger.

Sec. 2. This act shall be in full force and effect from and after its passage and approval.

Approved Feby. 11, 1911.

1741. **Railway Employees. Hours of Labor.**—On all lines of steam railroads or railways operated in whole or in part, within this state the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed sixteen (16) consecutive hours or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor or trainman to tie up any passenger or mail train between terminals. [Act approved February 5, 1907, Sec. 1.] (10th Sess. Chap. 5.)

1742. **Penalties.**—Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic or other railroad or railway official who shall order or require any locomotive engineer, locomotive fireman, conductor, trainman, operator or agent acting as operator, to labor contrary to the provisions of Section 1741 (1) of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be

punished by a fine of not less than one hundred (\$100.00) dollars or more than five hundred (\$500.00) dollars, or by imprisonment of not less than thirty days or more than sixty days in the county jail; and all railroad or railway corporations operating lines of railroads or railways in whole or in part in this state, shall be liable in damages for all injuries to any person or persons resulting from violations of the provisions of Section 1741 (1) of this act. [Act approved February 5, 1907, Sec. 2.] (10th Sess. Chap. 5).

1743. **Act Not to Apply to Relief or Wreck Trains.**—The provisions of Section 1741 (1) of this Act shall not apply to relief or wreck trains. [Act approved February 5, 1907, Sec. 3.] (10th Sess. Chap 5.)

1744. **Labor—Payment in Script Prohibited.**—It shall be unlawful for any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, to sell, give, deliver or in any way, directly or indirectly, to any person employed by him, or it, in payment of wages due or to become due, any script, token, check, draft, order, credit, or any book of account or other evidence of indebtedness payable to bearer or to his assignees except as hereinafter provided, but such wages shall be paid only in lawful money of the United States, or by check or draft drawn upon some bank in which such person, firm, company, corporation or trust, or the agent or business manager of such person, firm, company, corporation or trust, has money upon deposit to cash the same, and no assignment of any wages due, or to become due to any employee, shall be made to any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, or to any one interested, directly or indirectly in any firm, company, corporation, or trust employing said laborer. And any contract to the contrary shall be void; provided, however, this shall not prevent ranchmen, farmers, lumber camps, or mining camps from supplying their employees or paying said employees in other than cash or check where there is no bank or other store than that owned by said employers at which said employees may purchase supplies, or cash their bankable checks received for their labor. [Act approved March 7th, 1901, Sec. 1.] (7th Sess. 147.)

1745. **Same. Penalty.**—Every person, company, corporation

or trust, or agent or business manager of such person, firm, company, corporation or trust, who violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not less than one hundred (\$100.00) dollars, or more than five hundred (\$500.00) dollars, or by imprisonment in the county jail of not less than one month, or more than six months, or by both such fine and imprisonment. [Act approved March 7, 1901, Sec. 2.] (7th Sess. 147.)

1746. **Employment of Children Under Sixteen Years in Certain Occupations Prohibited.**—Any person, company, firm, association, or corporation engaged in business in this state, or any agent, officer, foreman or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed air railroad, or passenger or freight elevator, or where any machinery is operated or for any telegraph, telephone or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may in any way be detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided. [Act approved March 5, 1907, Sec. 1.] (10th Sess. Chap. 99.)

1751. **Penalties.**—Every person, firm, company, association or corporation who violates any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment. [Act approved March 5, 1907, Sec. 6.] (10th Sess. Chap. 99.)

1755. (Sec. 3390.) **Protection of Discharged Employees.**—If any person, after having discharged an employee from his service prevents, or attempts to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, such person is punishable as provided in Sec. 8067 (656), of the penal code, and is liable in

punitive damages to such discharged person, to be recovered by civil action; no person is prohibited from informing, by word or writing, any person to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.

1756. (Sec. 3391.) **Blacklisting Prohibited.**—If any company or corporation in this state authorizes or allows any of its agents to blacklist, or any person does blacklist, any discharged employee, or attempts by word or writing, or any other means whatever, to prevent any discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with another person, except as provided for in the next preceding section, such company or corporation or person, is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in civil action; and is also punishable as provided in Sec. 8467 (656) of the Penal Code.

1757. (Sec. 3392.) **Employee to Be Furnished Reason for Discharge.**—It is the duty of any person, after having discharged any employee from his service, upon demand by such discharge employee, to furnish him in writing a full, succinct and complete statement of the reason of his discharge, and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person, or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this chapter.

5052. (Sec. 2241.) **Certain Contracts Unlawful.**—All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or for wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

5053. (Sec. 2242.) **Employees Protected From Negligence.**—Any contract or agreement entered into by any person, company or corporation, with its servants or employes, whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of

the negligence of such person, company or corporation, or the agents or employes thereof, shall be absolutely null and void.

5054. (Sec. 2243.) **Contracts Fixing Damages, Void.**—Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

5241. (Sec. 2650.) The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer of a third person.

5242. (Sec. 2660.) **When Employer Must Indemnify Employe.**—An employer must indemnify his employe, except as prescribed in the next section, Sec. 5243 (2661), for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

5243. (Sec. 2661.) **When Not.**—An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

5244. (Sec. 2662.) **Employer to Indemnify For His Own Negligence.**—An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

5245. **Railway Corporation. Vice Principals.**—Every railway corporation including electric railway corporations, doing business in this state, shall be liable for all damages sustained by an employe thereof, within this state, without contributing negligence on his part, when such damages is caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or of any other employe who has superintendence of any stationary or hand signal. [Act approved March 5th, 1903, Sec. 1.] (8th Sess. Chap. 83).

5251. **Railway Corporations Liable for Negligence of Fellow Servant.**—Every person or corporation operating a railway or railroad in this state shall be liable for all damages sustained by any employe of such person or corporation in consequence of the neglect of any other employe or employes

thereof, or by the mismanagement of any other employes thereof, and in consequence of the wilful wrongs, whether of commission or omission, of any other employe or employes thereof, when such neglect, mismanagement or wrongs, are in any manner connected with the use and operation of any railway or railroad on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding. [Act approved January 16, 1905, Sec. 1.] (9th Sess. Chap. 1.)

5252. **Survival of Action.**—In case of the death of any such employe in consequence of any injury or damage so sustained, the right of action shall survive and may be prosecuted and maintained by his heirs or personal representatives. [Act approved January 16, 1905, Sec. 2.] (9th Sess. Chap. 1.)

5253. (Sec. 2670.) **Duties of Gratuitous Employe.**—One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

5254. (Sec. 2671.) **Same.**—One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

5255. (Sec. 2672.) **Same.**—A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

5256. (Sec. 2673.) **Duties of Employe for Reward.**—One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

5257. (Sec. 2674.) **Duties of Employe for His Own Benefit.**—One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

5258. (Sec. 2675.) **Contracts for Service Limited to Two Years.**—A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on apprentices, cannot be enforced against the employe beyond the term of two years from the commencement of service under it;

but if the employe voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

5259. (Sec. 2676.) **Employe Must Obey Employer.**—An employe must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employe.

5260. (Sec. 2677.) **Employe to Conform to Usage.**—An employe must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

5261. (Sec. 2678.) **Degree of Skill Required.**—An employe is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

5262. (Sec. 2679.) **Must Use What Skill He Has.**—An employe is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

5263. (Sec. 2680.) **What Belongs to Employer.**—Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

5264. (Sec. 2681.) **Duty to Account.**—An employe must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

5265. (Sec. 2682.) **Employe Not Bound to Deliver Without Demand.**—An employe who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employe himself.

5266. (Sec. 2683.) **Reference to Be Given to Employers.**—An employe who has any business to transact on his own ac-

count, similar to that intrusted to him by his employer, must always give the latter the preference.

5267. (Sec. 2684.) **Responsibility of Employe for Substitute.**—An employe who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

5268. (Sec. 2685.) **Responsibility for Negligence.**—An employe who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

5269. (Sec. 2686.) **Surviving Employe.**—Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

5270. (Sec. 2678.) **Confidential Employment.**—The obligations peculiar to confidential employments are defined in the title on trusts.

5271. (Sec. 2700.) **Termination by Death, Etc., of Employer.**—Every employment in which the power of the employe is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer, or,
2. His legal incapacity to contract.

5272. (Sec. 2701.) **Employment, How Terminated.**—Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe: or,
4. By his legal incapacity to act as such.

5273. (Sec. 2702.) **Continuance of Service in Certain Cases.**—An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service according to the

terms of the contract of employment.

5274. (Sec. 2703.) **Termination At Will.**—An employment having no specified term, may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

5275. (Sec. 2704.) **Termination by Employer for Fault.**—An employment, even for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the employe in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

5276. (Sec. 2705.) **Termination by Employe for Fault.**—An employment, even for a specified term, may be terminated by the employe at any time, in case of any wilful or permanent breach of obligations of his employer to him as an employe.

5277. (Sec. 2706.) **Compensation of Employe Dismissed for Cause.**—An employe, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

5278. (Sec. 2707.) **Compensation of Employe Leaving for Cause.**—An employe who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered, bear to the services which he was to render as full performance.

5279. (Sec. 2720.) **Servant, What.**—A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

5280. (Sec. 2721.) **Term of Hiring.**—A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

5281. (Sec. 2722.) **Same.**—In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

5282. (Sec. 2723.) **Renewal of Hiring.**—Where, after the

expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

5283. (Sec. 2724.) **Time of Service.**—The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

5284. (Sec. 2725.) **Servant to Pay Over Without Demand.**—A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person.

5285. (Sec. 2726.) **When Servant May Be Discharged.**—A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of his master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that if the master had known or contemplated it, he would not have so employed him.

8173. (Sec. 109.) **Unlawful Acts of Employers.**—It shall be unlawful for any employer, in paying his employees the salary or wages due them, to inclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices or arguments containing threats or promise, express or implied, calculated or intended to influence the political opinions or actions of such employees. Nor shall it be lawful for an employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employees may be working, any handbill or placard containing any threat or promise, notice or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or

wages of his workmen or employees be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employees. This Section shall apply to corporations as well as individuals, and any person violating the provisions of this Section is guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars, and imprisonment not exceeding six months in the county jail, and any corporation violating this Section shall be punished by fine not to exceed five thousand dollars, or forfeit its charter, or both such fine and forfeiture. [Act approved February 25, 1895.]

8466. (Sec. 655.) **Innkeepers and Carriers Refusing to Receive Guests.**—Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest, or to receive or entertain any passenger, is guilty of a misdemeanor.

8467. (Sec. 565.) **Protection of Discharged Employees.** Every person who violates any of the provisions of Chapter XXI., Title VII., Part III., of the Political Code, relating to the protection of discharged employees, and the prevention of blacklisting, is guilty of a misdemeanor.

8469. **False Representation to Procure Workmen.**—That it shall be unlawful for any person or persons, society, company, association, corporation, or organization of any kind, doing business in this State, to induce, influence, persuade or engage workmen to change from one place to another in this state, through or by means of deception, misrepresentation and false advertising concerning the kind or character of the work, or the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees, at the time of, or immediately prior to such engagement. Failure to state in any advertisement, proposal or contract for the employment of workmen that there is a strike, lock-out, or other labor trouble at the place of the proposed employment, when in fact such strike, lock-out or other trouble then actually exists at such place, shall be deemed a false advertisement and misrepresentation for the purpose of this Act. [Act approved March 5th, 1903, Sec. 1.] (8th Sess. Chap. 80.)

8470. **Same. Penalty.**—Every person, company, corporation, society, association, or organization of any kind, doing business in this State, violating any of the provisions of this Act, is punishable by a fine of not less than one hundred (\$100.00) dollars, nor more than two thousand (\$2000.00) dollars. [Act approved March 5th, 1903, Sec. 2.] (8th Sess. Chap. 80.)

8471. **Same. Action for Damages.**—Any workman of this State, or any workman of any State, who has been, or shall be, influenced, induced or persuaded to engage with any person mentioned in Sec. 8469 (1) of this Act, through or by means of any of the things prohibited by this Act, shall have a right of action for recovery of all damages that he has sustained in consequence of the deception, misrepresentation and false advertising used to induce him to change his place of employment, against any person corporation, company or association, directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorney's fees to be fixed by the Court and taxed as costs in any judgment recovered. [Act approved March 5th, 1903, Sec. 3.] (8th Sess. Chap. 80.)

8472. **Prohibiting Compulsory Company Boarding Houses.**—It shall be unlawful for any person, firm, company or corporation now operating, or who shall hereafter operate a boarding house in connection with their general business, either directly or through others, to compel an employe to board in such boarding house against his will. [Act approved March 6, 1903, Sec. 1.] (8th Sess. Chap. 102.)

8473. **Same. Penalty.**—Any person, firm, company or corporation violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars. [Act approved March 6, 1903, Sec. 2.] (8th Sess. Chap. 102.)

8675. (Sec. 922.) **Employe of Railroad Company Taking More Fare, Etc.**—Every officer, agent or employe of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

8676. (Sec. 923.) **Requiring Release of Liability, Etc.**—Every person, company or corporation, which requires of its servants or employes, as a condition of their employment or

otherwise any contract or agreement whereby such person, company or corporation is released or discharged from liability or responsibility on account of personal injuries received by such servants or employes, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.

8677. Extortion; Refusal to Pay Wages Without Discount. Every person, company or corporation, indebted to another person for labor, or any agent of any person, co-partnership, or corporation so indebted, who shall, with intent to secure from such other person a discount upon the payment of such indebtedness, wilfully refuse to pay the same, or falsely deny the same, or the amount or validity thereof, or that the same is due, is guilty of a misdemeanor; provided, however, that nothing herein contained shall prohibit any employer from fixing regular pay days for the payment of wages or salary earned in the calendar month immediately preceding such pay days, except in cases where the employe is discharged. [Act approved March 7, 1907.] (10th Sess. Chap. 144.)

8678. Receipt or Solicitation of Gifts by Foreman From Employes.—That any superintendent, foreman, assistant, boss, or any other person, or persons, who shall receive, or solicit, or cause to be received or solicited, any sum of money or other valuable consideration, from any person for or on account of the employment, or the continuing of the employment of such person, or of any one else, or for, or on account of any promise, or agreement, to employ or to continue to employ, any such person, or any one else, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand (1,000) dollars, or undergo an imprisonment in the county jail of not more than one (1) year, or both, at the discretion of the court. [Act approved February 28, 1907.] (10th Sess. Chap. 52.)

Chapter 95.—(11th Session).

“An Act to provide for the medical aid and assistance for injuries received by railroad trainmen or employes of railroads during the course of their employment, and providing for the payment thereof.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. In cases of injuries to or received by any railroad trainmen or employee of any railroad doing business in this state, which said injuries shall have been received during the regular course of employment of said railroad trainmen or employee, any one of said railroad trainmen or employee shall have the right, and is hereby empowered and given authority to call upon and retain the services of the nearest practicing physician or surgeon to care for and treat any such injured trainmen or employee, during and until such time as one of the regularly employed and paid physician or surgeon of such railroad corporation can and is able to treat and care for said railroad trainmen or employee.

Sec. 2. In cases where the services of any physician or surgeon other than the regularly employed physician or surgeon of the railroad corporation are retained and hired as provided in Section 1, of this act, such physician or surgeon shall be compensated and paid a reasonable fee for such services performed by him as provided in Section 1 of this act.

Sec. 3. If any railroad corporation refuses or neglects to pay for the services of any such physician as hereinbefore provided for within a reasonable time after such physician and surgeon has rendered the services therefor, such railroad corporation shall be guilty of a misdemeanor.

Sec. 4. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 5. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 6, 1909.

Chapter 29.—(12th Session.)

“An Act defining the liability of Persons or Corporations operating any railroad in this state, for injuries received by employes thereof, or in consequence of the death of any such employee, by reason of negligence, and to declare void contracts restricting such liability.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Every person or corporation operating a railroad in this state shall be liable in damages to any person suffering injury while he is employed by such person or corporation so operating any such railroad, or, in case of the death of such employee, instantaneously or otherwise, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employe; and, if none, then of such employe's parents; and, if none, then of the next of kin dependent, upon such employe, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employes of such person or corporation so operating such railroad in or about the handling, movement or operation of any train, engine or car, on or over such railroad, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment.

Sec. 2. In all actions hereafter brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe; provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such person or corporation so operating such railroad of any statute enacted for the safety of employes contributed to the injury or death of such employe.

Sec. 3. An employe of any such person or corporation so operating such railroad shall not be deemed to have assumed any risk incident to his employment when such risk arises by reason of the negligence of his employer or of any person in the service of such employer.

Sec. 4. Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any such

person or corporation so operating such railroad to exempt itself from any liability created by this act shall, to that extent, be void; provided, that in any action brought against any such person or corporation so operating such railroad, under or by virtue of any of the provisions of this act, such person or corporation may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employe, or the person entitled thereto, on account of the injury or death for which said action is brought.

Sec. 5. This act shall be in force and effect from and after its passage and approval.

Approved February 16, 1911.

Chapter 108.—(13th Session).

“An act regulating and limiting the hours of employment for female employees, and governing the conditions under which female employees shall work, in certain industries and providing penalties for violation thereof.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. No female shall be employed in any manufacturing, mechanical or mercantile establishment, telephone exchange room, or office, or telegraph office, laundry, hotel or restaurant in this state, for more than nine hours in any one day. The hours of work may be so arranged so as to permit the employment of females at any time so that they shall not work more than nine hours during the twenty-four of any one day, provided that females may be employed, in retail stores to work, not to exceed ten hours in any one day for one week immediately preceding Christmas Day; and provided further, that over time at extra compensation shall be allowed where life or property is in imminent danger.

Sec. 2. Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not employed in the active duties of their employment.

Section 3. Any employer who shall require any female to work in any of the places mentioned in Section 1, more than the number of hours provided in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to

so arrange the work of females in his employ, so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect or refuse to provide suitable seats, as provided in Section 2 of this act, or who shall permit or suffer any overseer, superintendent or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined for each offense not less than fifty (\$50.00) dollars, nor more than two hundred (\$200.00) dollars, or be imprisoned in the county jail for a period of not less than ten nor more than sixty days, or both such fine and imprisonment.

Sec. 4. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1913.

PART VI.

LAWS RELATING TO THE TRANSPORTATION OF PASSENGERS AND THEIR BAGGAGE; PASSENGER RATES, TICKETS, ETC.; FREE OR REDUCED RATES FOR CARRIAGE OF PASSENGERS.

4323. (Sec. 970.) **Checks to Be Fixed to Baggage.**—A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employe of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train and on producing the check, if his baggage is not delivered to him by the agent or employe of the railroad corporation, he may recover the value thereof from the corporation.

4324. (Sec. 971.) **Duties of Corporation.**—Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from and to such places, on due payment of tolls, freight or fare therefor.

4325. (Sec. 972.) **Corporation to Pay Damage for Refusal.** In case of refusal by such corporation or their agents so to take and transport any passengers or property or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

4326. (Sec. 973.) **Accommodations.**—Every railroad, corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

4327. (Sec. 974.) **Printed Regulations to Be Posted.**—Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any baggage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

4328. (Sec. 975.) **Passengers Refusing to Pay Fare.**—If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

4329. (Sec. 976.) **Officers to Wear Badge.**—Every conductor, baggage master, engineer, brakeman, or other employe of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employe without such badge, has any authority to meddle or interfere with any passenger or property.

4330. (Sec. 977.) **Passenger Tickets, How Issued.**—Every railroad corporation must provide, and on being tendered the regular rates of fare, furnish to every person desiring a passage on their passenger cars, a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased, to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six

months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

4331. (Sec. 978.) **Ticket Agent to Be Given Certificate. License.**—It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state, tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat, and shall for the information of travelers, be kept posted in a conspicuous place in the office of such agent. After the issue of such certificate as aforesaid, such agent, or superintendent, or general officer of such owners, shall, within ten days thereafter, exhibit the same to the secretary of state of the State of Montana, and at the same time shall pay to said secretary of state a license fee of one dollar, whereupon said secretary of state shall issue to such agent so presenting said certificate, a license under the seal of the state of Montana, authorizing such agent to engage in the business of selling transportation tickets of said common carrier; and said license so issued to such agent by said secretary of state shall also be kept posted in a conspicuous place in the office of such agent, for the information of travelers and of the public. [Act approved March 13, 1893.]

4332. (Sec. 979.) **Unlawful Sale of Tickets.**—It shall not be lawful for any person not in the possession of such certificate and license so posted as aforesaid, to sell, barter, or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated or owned within or without the limits of this state. [Act approved March 13, 1893.]

4333. (Sec. 980.) **Penalty.**—Whoever shall violate the provisions of the second section of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars and by imprisonment not exceeding one year, or either or both, in the discretion of the court in

which such offender shall be convicted. [Act approved March 13, 1893.]

4334. (Sec. 981.) **Certificate to Be Exhibited.**—It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell, and such license. [Act approved March 13, 1893.]

4335. (Sec. 982.) **Redemption of Unused Tickets.**—It shall be the duty of the owners of every railroad or steamboat situate or operated, in whole or in part, within this state, to provide for the redemption, under reasonable precautions, of the whole, or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser for any reason other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost, in case of the ticket not used, and in case of a coupon of a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; provided, that such ticket, or coupon, or coupons, shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired; and the deposit of such ticket, or part of ticket in the postoffice, addressed to any such agent with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket, shall be deemed such presentation; and the sale by any person of such ticket, or of the unused portion of any such ticket or coupon, or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this act, and any person guilty of such violation shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted: Provided, however, that when any ticket selling agent so licensed as aforesaid or any common carrier subject to the provisions of this act shall sell, barter or trans-

fer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket or excursion ticket shall by the terms thereof be limited in respect of the time in which the same shall be used, then, and in that case, such mileage book, commutation ticket or excursion ticket shall not be redeemed by said common carrier subject to the provisions of this act. [Act approved March 13, 1893.]

4336. (Sec. 983.) **Penalty.**—Any railroad company or steamboat company which shall by any of its authorized ticket selling agents within this state, unreasonably refuse to redeem any coupon of a ticket, or any ticket as required by Sec. 4335 (982) of this act, shall pay to the State of Montana, a fine not exceeding five hundred dollars for each offense. [Act approved March 13, 1893.]

4337. (Sec. 984.) **Discrimination in Charges Forbidden.**—It is hereby declared to be unlawful for any ticket selling agent so authorized and licensed as aforesaid, or for any common carrier subject to the provisions of this act, to charge, demand, collect or receive from, to sell, barter, transfer or assign to, any person or persons, firm, company, corporation or association, any ticket or tickets of any class whatever entitling the purchaser or holder thereof to transportation by the common carrier issuing such ticket or tickets, for a greater or less sum or price than is charged, demanded, collected or received by such ticket selling agent or common carrier subject to the provisions of this act, for a similar ticket or tickets of the same class. Any person, ticket selling agent or common carrier subject to the provisions of this act, for a similar ticket or tickets of the same class. Any person, ticket selling agent or common carrier subject to the provisions of this act who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum not exceeding one thousand dollars for each offense. [Act approved March 13, 1893.]

4349. **Passenger Rate of Three Cents Per Mile.**—It shall be unlawful for any railroad or railway company operating wholly or in part in the State of Montana, or any of the officers or employees thereof, to charge or receive, from any person who is to be conveyed or transported on any of the lines of any such railroad or railway companies from any point within this state, to another point within this state, a sum exceeding three (3)

cents per mile for the distance to be travelled by such person, nor shall any excess fare greater amount than ten cents be charged or collected from any passenger with promise of rebate or refund of such excess, and that for children between the ages of five (5) and twelve (12) years, not more than one-half of the rate named in Section 1 shall be charged, and that children under five (5) years of age, when accompanied by parent or guardian, shall be transported free of charge; provided, that no railroad or railway company, or the officers or employees thereof, shall be obliged to accept a single fare for a sum less than (5) cents; provided that any such railroad or railway company shall not be precluded from selling mileage books at a rate less than three cents per mile. All persons shall have equal right to purchase such mileage books. That all charges for fares shall end in the figures 0 or 5 and such figures shall be the one nearest to the fare computed under the provisions of this act. [Act approved March 4, 1905, Sec. 1.] (9th Sess. Chap. 87.)

4350. **To What Lines Applicable.**—The provisions of Section 1 of this Act shall not apply to independent lines of railroads or railways operating wholly within the State of Montana upon which a rate in excess of three (3) cents per mile is now charged, until such time as the state legislature, or other state officers, having power under the laws of Montana to name passenger rates, shall, in their judgment, deem the rate so charged to be excessive. [Act approved March 4, 1905, Sec. 2.]. (9th Sess. Chap. 87.)

4351. **Penalties.**—Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this act shall, upon conviction thereof, be fined in any sum not less than \$50.00 nor more than \$500.00. [Act approved March 4, 1905, Sec. 3.] (9th Sess. Chap. 87.)

4352. **Party Injured to Share Fine.**—In any and all cases wherein a conviction is secured for a violation of any provision of this act, the party injured shall be entitled to receive one-half of all fines imposed and collected, and the remaining one-half of such fines imposed and collected shall be paid in to the school fund of the city in which the action is prosecuted. [Act approved March 4, 1905, Sec. 4.] (9th Sess. Chap. 87.)

4353. **Tunnel Charges Prohibited.**—It shall be unlawful for any person, association or corporation operating, leasing or

owning a railroad in the State of Montana, to accept, demand or receive any tunnel charges, or to accept, demand or receive any extra mileage, or any extra compensation for or on account of any tunnel through which said line of railroad may run. Provided that none of the provisions of this act shall apply to rates or charges for travel to or from points outside of the State of Montana. [Act approved February 26th, 1901.] (7th Sess. 164-5.)

4354. **Same. Penalty.**—Any person, association or corporation, agent or manager, who shall violate any provision of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$200 nor more than \$1000 for each offense. [Act approved February 26th, 1901.] (7th Sess. 165.)

CARRIAGE IN GENERAL.

5296. (Sec. 2770.) **Contract of Carriage.**—The contract of carriage is a contract for the conveyance of property, persons or messages, from one place to another.

5297. (Sec. 2771.) **Obligations of Gratuitous Carriers.**—Carriers without reward are subject to the same rules as employes without reward, except so far as is otherwise provided by this title.

5298. (Sec. 2772.) **Obligations of Gratuitous Carrier Who Has Begun to Carry.**—A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

Gratuitous Carriage of Persons.

5299. (Sec. 2780.) A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

5300. (Sec. 2790.) **General Duties of Carrier.**—A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

5301. (Sec. 2791.) **Vehicles.**—A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

5302. (Sec. 2792.) **Not to Overload His Vehicle.**—A car-

rier of persons for reward must not overcrowd or overload his vehicle.

5303. (Sec. 2703.) **Treatment of Passengers.**—A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

5304. (Sec. 2794.) **Rate of Speed and Delays.**—A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

5342. (Sec. 2890.) **Obligation to Carry Baggage.**—A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger, without charge, except for an excess of weight over one hundred pounds to a passenger; but if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

5343. (Sec. 2891.) **Baggage, What.**—Baggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

5344. (Sec. 2892.) **Liability for Baggage.**—The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

5345. (Sec. 2893.) **Baggage, How Carried and Delivered.**—A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where baggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

5346. (Sec. 2894.) **Obligation to Provide Vehicles.**—A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

5347. (Sec. 2895.) **Seats for Passengers.**—A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

5348. (Sec. 2896.) **Regulations for Conduct of Business.**—A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

5349. (Sec. 2897.) **Fare, When Payable.**—A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

5350. (Sec. 2898.) **Ejection of Passengers.**—A passenger who refuses to pay his fare or conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

5351. (Sec. 2899.) **Fare Not Payable After Ejection.**—After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

5352. (Sec. 2900.) **Carrier's Lien.**—A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

8640. (Sec. 851.) **Counterfeiting Railroad Tickets, Etc.**—Every person who counterfeits, forges or alters any check, ticket, order, coupon, receipt for fare or pass, issued by any railroad company, or by any lessee or manager thereof, designated to entitle the holder to ride in the cars of such company, or who utters, publishes or puts into circulation, any such counterfeit or altered ticket, check or order, coupon, receipt for fare or pass, with intention to defraud any such railroad company, or any lessee thereof, or any other person is punishable by imprisonment in the state prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or both such imprisonment and fine.

8641. (Sec. 852.) **Restoring Canceled Tickets.**—Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates the cuts, marks, punch holes or other evidences of cancellation, from any ticket, check, coupon, removes, conceals, fills up, or obliterates the cuts, marks, punch holes or other evidences of cancellation, from any ticket, check, coupon, receipt for fare or pass, issued by any railroad company or any lessee or manager thereof, canceled in whole or in

part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intention to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or both.

8652. (Sec. 890.) **Value of Passage Tickets.**—If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel, or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper or writing.

8653. (Sec. 891.) **Written Instruments Completed but not Delivered.**—All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Chapter 108.—(12th Session.)

“An act to permit Railroad Companies to carry free, or at reduced rates, persons and property in certain cases.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. That nothing in the provisions of Chapter 4 or 5, Title VIII, of the Political Code, Revised Codes of Montana of 1907, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property free, or at reduced rates, for the government of the United States, or of the State of Montana, or the owner or owners of any fish hatchery, within this state, or of any anglers' association organized and existing therein, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the State of Montana; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or selling tickets at reduced rates to, any and all persons while actu-

ally engaged in transporting fish or fish eggs for stocking or planting the waters of this state with such fish or fish eggs.

Sec. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 6th, 1911.

Chapter 136.—(12th Session).

“An Act to prohibit and regulate the issuance of reduced or free transportation by common carriers, and providing penalties for violation thereof.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. No common carrier of passengers shall directly or indirectly issue, furnish or give any free ticket, free pass or free transportation for the carriage or passage of any person within this state except as permitted in section 2 of this act. Nor shall any common carrier in the sale of tickets for transportation at reduced rates, discriminate between persons purchasing the same, except the persons described in section 2 of this act. The words “free ticket,” “free pass,” “free transportation” as used in this act shall include any ticket, pass contract, permit or transportation issued, furnished or given to any person by any common carrier of passengers for carriage or passage, for any other consideration than money paid in the usual way at the rate, fare or charge, open to all who desire to purchase.

Sec. 2. The persons to whom free tickets, free pass, free transportation and discriminating reduced rates may be issued, furnished or given are the following, to-wit: (a) The officers, agents, employees, attorneys, physicians and surgeons, of such common carriers of passengers; (b) to the families of the persons included in subdivision “a” thereof; (c) the general officers of any such common carrier; (d) employees of sleeping car and express car companies, and linemen of telegraph and telephone companies, railway mail service employees, post office inspectors, custom inspectors and immigration inspectors, newsboys on trains, baggage agents; (e) persons injured in wrecks, and physicians and nurses attending such persons; (f) passengers traveling with the object of providing relief in cases of railroad accident, general epidemic, pestilence, or other calamitous

visitation; (g) necessary caretakers of live stock, vegetables and fruit; including return transportation to forwarding station; (h) the officers, agents, or regularly accredited representatives of labor organizations, composed wholly of employees of railway companies; (i) inmates of homes for the reform or rescue of the vicious or unfortunate, including those about to enter and those returning home after discharge, and boards of managers, including officers and superintendents of such homes; (j) superannuated and pensioned employees and members of their families and widows of such members; (k) employees, crippled and disabled in the service of the common carrier of passengers; (l) policemen and firemen of any city, wearing the insignia of their office within the limits of such city ;(m) ministers of religion, newspaper employees in exchange for advertising, traveling secretaries of Young Men's Christian associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; (n) indigent destitute and homeless persons, while being transported by charitable societies or hospitals, and necessary agents employed in such transportation; (o) school children to and from public or parochial schools; (p) the Railroad Commission of Montana and its necessary employees, while traveling on official duty. The provisions of this act shall not be construed to prohibit the interchange of passes for the persons to whom free tickets, free passes or free transportation may be furnished or given under the provisions of this section. Nothing in this act shall be construed to invalidate any existing contract between a street railway company and a city where a condition of a franchise grant requires the furnishing of transportation to policemen, firemen, and officers while in the performance of official duties.

Sec. 3. Any common carrier, its officers or agents or representatives, violating any of the provisions of this act shall be fined in the sum of not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300.00), for each offense and any person other than the persons excepted in section 2 of this act who accepts or uses any free ticket, free pass or free transportation for carriage or passage within this state, shall be subject to a like penalty.

Sec. 4. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 5. This act shall be in full force and effect from and after its approval by the Governor.

Approved March 10, 1911.

Chapter 53.—13th Session.)

“An Act to permit common carriers to carry free or at reduced rates persons and property in certain cases.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. That nothing in provisions of Chapters 4 and 5, Title VIII, of the Political Code, Revised Statutes of Montana, 1907, or in any other provisions of the laws of the State of Montana, shall be construed to prevent, or shall prevent any person, association, company, or corporation engaged as a common carrier of persons, or property in the State of Montana from carrying, storing, or handling property free, or at reduced rates for the United States, state or municipal governments, or for charitable institutions, or property which is being transported to, or from fairs and expositions for exhibit thereat, or cars used by the government of the United States or State of Montana for the transportation of fish, or for carrying free or at reduced rates agents and employees employed in such transportation and nothing therein contained shall prevent such person, association, company, or corporation from issuing free transportation, or selling tickets at reduced rates to the following classes of persons:

Employees of the issuing road and the members of their families.

Officers and employees of other railroads and the members of their families upon the exchange passes or tickets.

Doctors, nurses and helpers being carried to wrecks.

Soldiers or sailors going to or coming from institutions for their keeping.

Ministers of religion and persons engaged in charitable or religious work, and destitute or homeless persons being transported by charitable societies or at public expense.

Executive, judicial or legislative officers of the State of Montana, including the state game warden and his deputies, the members of the state board of horticulture, members of the faculty of the different educational institutions of the state, officers, trustees or employees of the state fair, officers and inspectors of the live stock and sheep commission boards. Provided, however, that when free transportation, or a ticket at a

reduced rate shall be issued to any such officer, state game warden, or deputy, or any member of the said board of horticulture or any president or member of the faculty of any educational institution that the same shall only be issued upon the application of the secretary of the state, and the said transportation, or ticket shall be delivered to the secretary of state for delivery to the person or persons applying therefor and the secretary of state shall keep record of all transportation, and tickets at reduced rates so received and delivered by him, provided further that such state officer, state game warden, and deputies and members of the state board of horticulture, and the president and faculty of the state educational institutions when traveling upon any free transportation shall not be entitled to charge any mileage against the state, or if traveling upon a ticket sold at reduced fare they shall not be entitled to charge mileage in excess of the cost of said ticket.

Sec. 2. The carrying free, or at reduced rates, of property or persons in any of the classes above specified, shall be held to be a reasonable classification by railroad companies for such purposes and not to be unjust discrimination, and the carriage and transportation by any railroad company, at free or reduced rates, in any of the cases above specified, shall be held not to be a violation of any of the provisions of the laws of Montana, or subject said railroad company to any penalty therefor.

Sec. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 4. This act shall be in full force and effect from and after its passage and approval.

Approved March 4, 1913.

PART VII.

LAWS RELATING TO THE TRANSPORTATION OF FREIGHT; UNCLAIMED PROPERTY; STORAGE OF FREIGHT; CONTRACTS OF CARRIAGE; SURRENDER OF BILLS OF LADING; CARE AND DILIGENCE; CONDITION OF VEHICLES FURNISHED FOR TRANSPORTATION; TRACK SCALES; STANDARD WEIGHTS.

5305. (Sec. 2800.) **Freight. Definition of**—Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

5306. (Sec. 2810.) **Care and Diligence Required of Carriers.**—A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

5307. (Sec. 2811.) **Carrier to Obey Directions.**—A carrier must comply with the directions of the consignor or consignee to the same extent as an employe is bound to comply with those of his employer.

5308. (Sec. 2812.) **Conflict of Orders.**—When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

5309. (Sec. 2813.) **Delivery of Freight.**—A carrier of property must deliver it to the consignee at the place to which it is addressed, in the manner usual at that place.

5310. (Sec. 2814.) **Place of Delivery.**—If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

2. If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

5311. (Sec. 2815.) **Obligations of Carrier When Freight Is not Delivered to Consignee.**—If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety upon his responsibility as a warehouseman,

until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier he may give the notice by letter dropped in the nearest postoffice.

5312. (Sec. 2816.) **How Carrier May Terminate His Liability.**—If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

5314. (Sec. 2830.) **Bill of Lading, What.**—A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

5315. (Sec. 2831.) **Bill of Lading Negotiable.**—All the title to the freight which the the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

5316. (Sec. 2832.) **Same.**—When a bill of lading is made to “bearer” or equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

5317. (Sec. 2833.) **Effect of Bill of Lading on Rights, Etc., of Carrier.**—A bill of lading does not alter the rights or obligations of the carrier as defined in this chapter, unless it is plainly inconsistent therewith.

5318. **Bills of Lading.**—A carrier on demand must subscribe and deliver to the consignor an original bill of lading and on demand must also furnish to him any reasonable number of copies thereof, each of such copies to be of the same tenor as the original and to express truly the original contract for carriage; and if any carrier refuses to do so, the consignor may take the freight from him and recover from him, besides, all damage thereby occasioned. [Act approved February 28th, 1901.] (7th Sess. 154.)

5319. (Sec. 2835.) **Carrier Exonerated by Delivery According to Bill of Lading.**—A carrier is exonerated from liability

for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

5320. (Sec. 2836.) **Carrier May Demand Surrender of Bill of Lading Before Delivery.**—When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon, before delivering the freight.

5120. (Sec. 2401.) **Right to Inspect Goods.**—On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and may rescind the contract if the seller refuses to permit him to do so.

5321. (Sec. 2840.) **When Freightage is to Be Paid.**—A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

8731. (Sec. 1020.) **Issuing Fictitious Bills of Lading, Etc.**—Every person being the master, owner, or agent of any vessel, or officer or agent, of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8732. (Sec. 1021.) **Issuing Fictitious Warehouse Receipts.** Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8733. (Sec. 1022.) **Erroneous Bills of Lading or Receipts Issued in Good Faith.**—No person can be convicted of any offense under the last two sections by reason that the contents of any barrel, box, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew such marks, labels, or brands were untrue.

8734. (Sec. 1023.) **Duplicate Receipts Must Be Marked "Duplicate."**—Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate" in a plain and legible manner, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

8735. (Sec. 1024.) **Selling, Etc., Property Received for Transportation or Storage.**—Every person mentioned in this chapter who sells, hypothecates or pledges any merchandise for which any bill of lading, receipt, or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment in the state prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both. The provisions of this section do not apply where the property is demanded or sold under process of law.

2003. (Sec. 2920.) **Common Carriers May Retain Goods Until Charges Are Paid.**—When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchants, or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouseman, may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

2004. (Sec. 2921.) **Property Unclaimed Within Sixty Days to Be Sold, How.**—If no person calls for the property within ninety days from the receipt thereof, and pays freight and charges thereon, the carrier, commission merchant, or ware-

houseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

2005. (Sec. 2922.) **Proceeds Unclaimed, Where to Go.**—If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

2006. (Sec. 2923.) **Carrier's Responsibility Ceases, When.** After the storage of goods, merchandise or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care.

2007. (Sec. 2924.) **Property Upon Which Advances Are Due, May Be Sold, When.**—When any commission merchant or warehouseman receives on consignment, produce, merchandise or other property, and makes advances thereon, either to the owner, or for freight and charges, he may, if the same is not paid to him within ninety days from the date of such advances, cause the produce, merchandise or property, on which the advances were made, to be advertised and sold as provided herein.

2008. (Sec. 2925.) **Fees of Officers.**—The fees of officers under this chapter are the same as allowed for similar services in other cases provided in this code, to be paid by the taker up or finder, and recovered of the owner.

5157. (Sec. 2490.) **Deposit for Hire.**—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

5158. (Sec. 2491.) **Degree of Care Required of Depositary for Hire.**—A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

5159. (Sec. 2492.) **Rate of Compensation for Fraction of a**

Week, Etc.—In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

5160. (Sec. 2493.) **Termination of Deposit.**—In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon a reasonable notice.

5161. (Sec. 2494.) **Same.**—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

5162. **Sale to Pay Costs of Storage.**—Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof, may, after keeping the same in store for ninety days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction, to the highest bidder, for cash, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for four weeks next previous to the day of sale, and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto, in some other county, in this state. But no more of such property shall be sold than is necessary to pay the charges due, together with the costs. [Act approved February 25th, 1901, Sec. 1.] (7th Sess. 153.)

5163. **Application of Proceeds of Sale.**—After paying the expenses of sale, including the publication of notice, the storage or commission merchant, or the carrier, shall be authorized, out of the proceeds arising from the sale of the property,

to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof. All sales under this article shall vest the title to the property sold in the purchaser thereof. [Act approved February 25th, 1901, Sec. 2.] (7th Sess. 153-4.)

5322. **Consignor, When Liable for Freightage.**—The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

5323. (Sec. 2842.) **Consignee, When Liable.**—The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

5324. (Sec. 2843.) **Natural Increase of Freight.**—No freightage can be charged upon the natural increase of freight.

5325. (Sec. 2844.) **Apportionment by Contract.**—If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

5326. (Sec. 2845.) **Same.**—If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

5327. (Sec. 2846.) **Apportionment According to Distance.**—If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

5328. (Sec. 2847.) **Freight Carried Further Than Agreed, Etc.**—If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on

demand of the consignee, at the place and time of its arrival.

5329. (Sec. 2848.) **Carrier's Lien for Freightage.**—A carrier has a lien for freightage, which is regulated by the title on liens.

5353. (Sec. 2910.) **Liability of Inland Carriers for Loss.**—Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to Sections 5309 (2813) to 5312 (2816), for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, weakness, or a spontaneous action of the property itself.
2. The act of a public enemy of the United States, or of this state.
3. The act of the law; or,
4. An irresistible superhuman cause.

See Page 196.

5354 (Sec. 2911). **When Exemptions Do Not Apply.**—A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

5355. (Sec. 2912.) **Liability for Delay.**—A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

5356. (Sec. 2913.) **Consignor of Valuables to Declare Their Nature.**—A common carrier of gold, silver, platina, or of precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass or chinaware; of statuary, silk or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight, nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

5357. (Sec. 2914.) **Delivery of Freight Beyond Usual Route.**—If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route, in that direction, to some other

competent carrier carrying to the place of address, or connected with those who thus carry.

5358. (Sec. 2915.) **Proof to Be Given in Case of Loss.**—If freight addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must within reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

5359. (Sec. 2916.) **Carrier's Services, Other Than Carriage and Delivery.**—In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

5360. (Sec. 2917.) **Sale of Perishable Property for Freight.**—If, from any cause other than want of ordinary care and diligence on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage.

5837. (Sec. 3970.) **When Consignor May Stop Goods.**—A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

5838. (Sec. 3971.) **What Is Insolvency of Consignee.**—A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

5839. (Sec. 3972.) **Transit, When Ended.**—The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

5840. (Sec. 3973.) **Stoppage, How Effected.**—Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

5841. (Sec. 3974.) **Effect of Stoppage.**—Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

6063. (Sec. 4315.) **Breach of Carrier's Obligation to Re-**

ceive Goods, Etc.—The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

6064. (Sec. 4316.) **Breach of Carrier's Obligation to Deliver.**—The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

6065. (Sec. 4317.) **Carrier's Delay.**—The detriment caused by a carrier's delay in the delivery of freight is deemed to be in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place at which it ought to have been delivered and the day of its actual delivery.

8688. (Sec. 938.) **Consignee, False Statement By.**—Every commission merchant, broker, agent, factor or consignee who shall wilfully and corruptly make or cause to be made to the principal or consignor of such commission merchant, agent, broker, factor or consignee a false statement concerning the price obtained for or the quality or quantity of any property consigned or entrusted to such commission merchant, agent, broker, factor or consignee for sale, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars or imprisonment in the county jail not exceeding six months, or both.

8689. **Removal of Mortgaged Property.**—Every person who after mortgaging any personal property, except locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use and vessels, voluntarily removes, or permits the removal of such mortgaged property from the county where it was situated at the time it was mortgaged, without the written consent of the mortgagee, with intent to deprive the mortgagee of his claim thereto and interest therein, is guilty of larceny. [Act approved March 3, 1905.] (9th Sess. Chap. 72.)

2009. (Sec. 3120.) **What are Standards.**—The weights and

measures accepted and used by the government of the United States at the present time, except as hereinafter provided, are the lawful standard weights and measures of the state.

2014. (Sec. 3125.) **Units of Weights.**—The standard avoirdupois and troy weights are the units of standards of weight from which all other weights are derived and ascertained.

2015. (Sec. 3126.) **Division of a Pound.**—The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundred weight consists of one hundred avoirdupois pounds, and twenty hundred weight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

2016. (Sec. 3127.) **Unit of Liquid Measure.**—The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

2017. (Sec. 3128.) **Barrel and Hogshead.**—The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

2018. (Sec. 3129.) **Unit of Solid Measure.**—The standard half bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

2019. (Sec. 3130.) **Unit of half bushel.**—The peck, half peck, quarter peck, quart and pint measures for measuring commodities other than liquid are derived from the half bushel by successively dividing that measure by two.

2023. **Standard Ton and Bushel.**—The ton consists of twenty hundred pounds, but a ton of mineral coal is expressed by the conventional quantity of twenty-six and one-third bushels of seventy-six pounds each. A bushel of each of the articles hereinafter named consists of the number of pounds affixed to each, to-wit:

| | Pounds. |
|------------------------|---------|
| Apples and Pears | 45 |
| Beans | 60 |
| Bran | 20 |
| Carrots | 50 |
| Barley | 48 |
| Beets | 50 |
| Buckwheat | 52 |

| | |
|------------------------|---------|
| Coal, Mineral | 76 |
| Corn, in the ear | 70 |
| Cornmeal | 50 |
| Lime, unslacked | 80 |
| Oats | 32 |
| Parsnips | 50 |
| Peas | 60 |
| Salt | 50 |
| Corn, shelled | 56 |
| Hay, per ton | 2000 |
| Malt | 30 |
| Onions | 57 |
| Potatoes | 60 |
| Rye | 56 |
| Seeds. | Pounds. |
| Blue Grass | 14 |
| Timothy | 45 |
| Hemp | 44 |
| Turnips | 50 |
| Clover | 60 |
| Hungarian Grass | 50 |
| Flax | 56 |
| Wheat | 60 |

Any person, persons, companies or corporations who shall violate the provisions of this section by demanding, exacting or taking more than the prescribed number of pounds per bushel or per ton as fixed by the provisions of this section, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than three nor more than six months or by both such fine and imprisonment, in the discretion of the court. [Act approved February 18th, 1901.] (7th Sess. 137-9.)

Chapter 77.—(13th Session).

Sec. 20. **Weights and Measures.**—The standard measure of capacity for milk shall be the gallon containing two hundred thirty-one (231) cubic inches; the half gallon shall contain one hundred fifteen and five-tenths (115.5) cubic inches, and the quart one-fourth as much as the gallon, and the pint one-half as much as the quart.

Chapter 83.—(13th Session).

Sec. 11. **Track Scales of Common Carriers Under the Control and Jurisdiction of State Sealer of Weights and Measures.**—(a) All track-scales used by common carriers for the purpose

of weighing freight in carload lots within this state shall be under the control and direction and jurisdiction of the state sealer of weights and measures and subject to inspection by him, his inspectors or deputy sealers of weights and measures.

(b) The state sealer of weights and measures, his inspectors or his deputy sealers of weights and measures shall have power either on their own motion or on complaint being made to determine whether any such track scale is defective or inefficient, or whether the time, manner or method of using same is unreasonable, ineffective or unjust, and shall have power to condemn any such scale found to be defective or inefficient and prohibit the use of the same while in that condition, and to render such decision and to make such order, rule or regulation as may be deemed necessary or advisable.

(c) Any person or persons who shall knowingly and wilfully sell, or direct, or permit any person or persons in his or their employ to sell any commodity or article of merchandise, and make or give any false or short weight or measure, or any person or persons owning or keeping, or having charge of any scales or steel-yards for the purpose of weighing livestock, hay grain, coal, or other articles, who shall knowingly and wilfully report any false or untrue weight, whereby any other person or persons may be defrauded or injured; such person or persons shall be fined in any sum not exceeding five hundred (\$500.00) dollars, or be imprisoned in the jail of the county not exceeding thirty days, at the discretion of the court, and also be answerable to the party defrauded or injured in double damages.

PART VIII.

LAWS RELATING TO TAXATION AND LICENSES.

2508. (Sec. 3696.) **Railroads, How Assessed.**—The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state, must be assessed by the state board of equalization, as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority they must be assessed in the county in which the corporations, firms or persons owning or holding them have their principal place of business.

2510. (Sec. 3700.) **When Assessment to Be Made. Credits Must Be Assessed, How.**—The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed or in whose possession or control it was at twelve o'clock m., of the first Monday of March next preceding; but no mistake in the name of the owner, or supposed owner, of real property, renders the assessment thereof invalid. Credits must be assessed as provided in Sec. 2501 (3680), subdivision 6.

2511. (Sec. 3701.) **Statement, What to Contain.**—He must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m., on the first Monday in March. Such statement must be in writing, showing separately.

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government, improvements and personal property, including all vessels, steamers and other water craft, and all taxable, state, county, city or other municipal or public bonds, and the taxable bonds of any person, firm or corporation and deposits of money, gold dust or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found, all mortgages, deeds of trust, contracts and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier or managing agent, deducting from the sum total of such credits only such debts, secured or unsecured, as may be owing by such person, firm or corporation. No debt is to be so deducted unless the statement shows the amount of such debt, as stated under oath, in the aggregate. In case of banks, the statement is not required to show the debts in detail, or to whom it is owing; but the assessor has the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of the corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation or association of persons owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

2516. (Sec. 3706.) **Assessment of Unknown or Absent Owners.**—If the owner or claimant of any property, not listed by

another person, is absent or unknown, the assessor must make an estimate of the value of such property.

2517. (Sec. 3707.) **Same.**—If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to “unknown owners.”

2518. (Sec. 3708.) **Property Situated in Another County.**—The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail, to the assessor of the proper county, who must assess the same as other taxable property therein.

2519. (Sec. 3709.) **Consigned Property.**—All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

2520. (Sec. 3710.) **Trustees, Guardians, Executors, Etc.**—When a person is assessed as agent, trustee, bailee, guardian, executor or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment.

2521. (Sec. 3711.) **Property of a Firm or Corporation, Where Assessed.**—The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

2522. (Sec. 3712.) **Undistributed Property of Deceased Persons.**—The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

2523. (Sec. 3713.) **Capital Stock and Franchises of Corporations, Where Assessed.**—The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

2525. (Sec. 3715.) **Property of Express and Stage Companies, Etc.**—The personal property of express, transportation and stage companies, steamboats, vessels and other water craft

must be listed and assessed in the county, town or district where such property is usually kept.

2528. (Sec. 3718.) **Street Railroads, Bridges and Ferries.**—Street railroads and bridges, and ferries and their franchises, owned by persons or corporations, must be listed and assessed in the county, town or district where such property, or any portion thereof, is located, and the track of the railroad and the bridge are personal property.

2529. (Sec. 3719.) **Railroads, Telegraph, Telephone and Electric Light Lines.**—Railroads operated in one county and not assessed by the state board of equalization; telegraph, telephone and electric light lines and similar improvements, and the franchises; canals, ditches and flumes, and the franchises of the same, must be listed and assessed in the county in which such property is located, and the assessor must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement, containing a list of the number of miles such property as is operated in the county, and the value thereof.

2556. (Sec. 3737.) **Assessment of Railroads.**—The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating any railroad in more than one county in this state, must, on or before the first Monday in March of each year, furnish the said board a statement signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year:

1. The whole number of miles of railroad in the state; and where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state owned or operated by such corporation, person or association.

2. The value of the roadway, roadbed and rails of the whole railroad, and the value of the same within the state.

3. The width of the right of way.

4. The number of each kind of all rolling stock used by such corporation, person or association in operating the entire railroad including the part without the state.

5. Number, kind and value of rolling stock owned and operated in the state.

6. Number, kind and value of rolling stock used in the state, but not owned by the party making the returns.

7. Number, kind and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

8. The whole number of side tracks in each county, including the number of miles of track in each railroad yard in the state.

9. The number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight and other cars, or property owned or leased by such corporation, persons or association.

10. The number of sleeping and dining cars not owned by such corporation, person or association, but used in operating the railroads of such corporation, person or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

11. A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold, for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation or association given the description. No assessment is invalid on account of a misdescription of the railroad or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person or association failing to furnish the statement is conclusive and final.

12. Also showing in detail for the year preceding the first of January:

First. The gross earnings of the entire road.

Second—The gross earnings of the road within the state, and, where the railroad is let to other operators, how much

was derived by the lessor as rental.

Third—The cost of operating the entire road, exclusive of sinking fund expenses of land department and money paid to the United States.

Fourth—Net income for such year and amount of dividend declared.

Fifth—Capital stock authorized.

Sixth—Capital stock paid in.

Seventh—Funded debt.

Eighth—Number of shares authorized.

Ninth—Number of shares of stock issued.

13. Any other facts the state board of equalization may require.

2557. (Sec. 3738.) **Assessment, How Made.**—The state board of equalization must meet at the state capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the second Monday in August, and later if the business of the board requires it. At such meeting the board must assess the franchise, roadway, roadbed, rails and rolling stock, of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling stock must be assessed in the name of the person, corporation or association owning, leasing or using the same. Assessment must be made to the corporation, person or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state, and must include the right of way, bridges and culverts of the railroad. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation or association, except as above provided, are assessed by the assessor of the county wherein they are situate. Between the second and third Mondays of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails and rolling stock of each railroad to the counties in which such railroad is located, in proportion to the number of miles of railroad laid in such counties.

2558. (Sec. 3739.) **State Board of Equalization Must Transmit Statement to County Clerk.**—The state board of equalization must, within the time mentioned in the preceding section transmit by mail to the county clerk of each county to which such apportionment has been made, a statement showing the

length of the main track of such railroad within the county, with a description of the whole of said track within the county, including the right of way, by metes and bounds or other description sufficient for identification, the assessed value per mile of the same as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails and rolling stock of such railroad within the state, and the amount apportioned to the county. The county clerk must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment book or roll as aforesaid, which shows the total value of all property for taxation of the county.

2559. (Sec. 3740.) **County Commissioners Enter Assessment Order.**—On the second Monday in September, the board of county commissioners must make, and cause to be entered in the proper record book, an order stating and declaring the length of main track of the railroad assessed by the state board of equalization within the county; the assessed value per mile of such railroad, the number of miles of track, and the assessed value of such railroad, lying in each city, town, school and road district or lesser taxing district in the county, through which such railroad runs, as fixed by the state board of equalization, which constitutes the assessment value of said property for taxable purposes in such city, town, school, road or other district; and the county clerk must on application transmit a copy of each order or equalization to the city or town council or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district and the authorized authorities of other taxation districts through which such railroad runs. All such railroad property is taxable upon said assessment, at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, school, road and lesser taxation districts, respectively; and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

2560. (Sec. 3741.) **Dissatisfied Owners of Railroads May Apply Again.**—If the owner of a railroad assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, under the provision of Sec. 2584 (3801) between the third Monday in July and the second Monday in August, apply to

the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it, so as to equalize the same with the assessment of other property in the state. If the board increases or lowers any assessment previously made by it, it must make a statement to the county clerk affected by the change in the assessment book of the county as directed by the board.

2561. (Sec. 3742.) **Record of Assessment and Apportionment.**—The state board of equalization must prepare each year a book, to be called "Record of Assessment of Railroads," in which must be entered each assessment made by the board, either in writing, or by both writing and printing. Each assessment so entered must be signed by the president and secretary. The record of the appointment of the assessments made by the board to the counties must be made in a separate book, to be called "Record of Apportionment of Railroad Assessments." In such last described book must be entered the names of the railroads assessed by the board, the names of the corporations to which, or the name of the person or association to whom, each railroad was assessed, the whole number of miles of the railroad in the state, the number of miles in each county, the total assessment of the franchise, roadway, roadbed, rails and rolling stock for purposes of state taxation, and the amount of the apportionment of such total assessment to each county for county taxation.

2562. (Sec. 3743.) **Basis of Taxation.**—The assessment made by the county assessor, and that of the state board of equalization, as apportioned by the boards of county commissioners to each city, town, school, road or other district in their respective counties, is the only basis of taxation for the county, or any subdivision thereof, except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect. All taxes upon road, school or other local districts must be collected in the same manner as county taxes.

2584. (Sec. 3801.) **Powers and Duties.**—The powers and duties of the state board of equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.

2. To prescribe rules and regulations not in conflict with the constitution and the laws of the state, to govern county commissioners when equalizing, and assessors when assessing.

3. To make out and prepare, and enforce the use of forms in relation to the assessment of property.

4. To hold meetings at the state capitol, as prescribed by its rules, and such special meetings as the president may direct.

5. To annually assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state, at their actual value, at the first Monday in March, at twelve o'clock m., and to apportion such assessment to the counties in which such railroads are located, in proportion to the number of miles of railroad laid in such counties, in the manner provided for in Sec. 2556 (3737) of this code.

6. To equalize the assessment of each mortgage, deed of trust, contract or other obligation by which a debt is secured, and which affects property situated in two or more counties, and to apportion the assessment thereof to each of said counties.

7. To transmit to the county clerk of each county its apportionment of the assessments made by such board upon the franchises, roadways, roadbeds, rails and rolling stock of railroads; and also its apportionment of the assessments made by such board upon mortgages, deeds of trust, contracts and other obligations by which debts are secured, in the manner provided for in Sec. 2556 (3737) of this code.

8. To meet at the state capital on the fourth Monday in July, and remain in session from day to day (Sundays excepted), until the third Monday in August, and later if the business of the board requires.

9. At such meetings to equalize the valuation of the taxable property of the several counties in this state for the purpose of taxation; and to that end, under such rules of notice to the county clerk of the county affected thereby as it may prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value in money of the property assessed.

10. To visit as a board, or by the individual members thereof, whenever deemed necessary, the several counties of the state, for the purpose of inspecting the property and learning the value thereof.

11. To call before it, or any member thereof, on such visit,

any officers of the county, and to require them to produce any public records in their custody.

12. To issue subpoenas for the attendance of witnesses or production of books before the board, or any member thereof; which subpoenas must be signed by a member of the board, and may be served by any person.

2702. (Sec. 3970.) **Corporations Liable for Poll Tax.**—Every person, corporation or association employing one or more persons subject to poll tax are liable for any and all poll taxes that may be due from such employes, and may deduct the amounts paid out for such poll taxes from any sums due, or that may afterwards become due, from such employes, whether the wages are payable directly to the employes, or to other persons who furnish such employes under contract.

2703. (Sec. 3971.) **Assessor May Require Statement.**—The assessor may require the person or his agent or any officer or agent or manager of any association or corporation to make a verified statement showing the number and giving the names of the employes of such person, association or corporation, and if such statement is not furnished the assessor must make an estimate of the persons so employed and assess them, and such statement is as valid as if made on a verified statement. The person, association or corporation refusing to make such verified statement, forfeits the sum of five hundred dollars, which may be recovered in an action brought in the name of the county.

2704. (Sec. 3972.) **May Seize Property of Corporation.**—The assessor, in case of a failure of a person, corporation or association to pay the poll tax in the manner mentioned in this chapter, must seize so much of the property of such person, association or corporation as will be sufficient to pay the poll tax and costs, and sell the same as provided in this chapter.

2774. **Common Carriers and Express Companies.**—Every person, association or corporation, who engages in business in this state as a common carrier in the transmission or carrying of gold dust, gold and silver coin or bullion, monies or bank notes, packages or express matter, or passengers, from one place within this state to another place within this state, for hire or profit, must procure therefor a state license from the state treasurer, or from the county treasurer of the county where their principal office is located, and pay therefor as follows:

Those doing business to the amount of \$75,000.00 or over per quarter must pay \$225.00 per quarter.

Those doing such business to the amount of \$50,000.00 and under \$75,000.00 per quarter must pay \$150.00 per quarter.

Those doing such business to the amount of \$25,000.00 and under \$50,000.00 per quarter must pay therefor \$75.00 per quarter.

Those doing such business to the amount of \$15,000.00 and under \$25,000.00 per quarter must pay therefor \$50.00 per quarter.

Those doing such business to the amount of \$5,000.00 and under \$15,000.00 per quarter must pay therefor \$25.00 per quarter.

Those doing such business in any amount less than \$5,000.00 per quarter must pay therefor \$5.00 per quarter.

Provided that no license or occupation tax shall be levied, imposed on or collected from any such express company or other common carrier by any municipal corporation. [Act approved March 4th, 1903.] (8th Sess. Chap. 57).

8598. (Sec. 776.) **Making False Statement, Not Under Oath, in reference to Taxes.**—Every person who, in making any statement, not upon oath, oral or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment or of an application to reduce any tax or assessment, wilfully states anything which he knows to be false, is guilty of a misdemeanor.

8601. (Sec. 779.) **Refusing to Give Name of Person in Employment, etc.**—Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector access to the building or place where such men are employed, is guilty of a misdemeanor.

8602. (Sec. 780.) **Carrying on Business Without License.**—Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this state, without taking out or procuring a license prescribed by such law, is guilty of a misdemeanor.

Chapter 72.—(13th Session).

Section 1. For the purpose of raising revenue for the construction, maintenance and improvements of

public highways, the Board of County Commissioners in each county in this state shall annually levy and cause to be collected a general tax upon the taxable property in the county of not less than two mills, nor more than five mills on the dollar which shall be payable to the county treasurer with other general taxes. There is also established a general road tax of two (\$2.00) dollars per annum on each male person over the age of twenty-one (21) years and under the age of fifty (50) years resident within the county on the first day of March, which shall be due and payable by each person liable therefor at any time within the year when demanded by the county treasurer, or his deputy; provided that the foregoing provisions of this section shall not apply to incorporated cities and towns which by ordinance provide for the levy and collection of a like general tax, and a like special tax, within such cities and towns for road, street and alley purposes. All monies collected under the provisions of this act shall belong to the general road fund of the county.

Section 3. Every employer having in his or its employment any person or persons liable for the special road tax of Two (\$2.00) Dollars mentioned in this act, must, on or before the third Monday of March in each year and monthly thereafter until the first day of October, furnish to the county treasurer a complete list of all the persons so employed and if any such employer shall neglect or refuse to furnish such list; he shall forfeit to the county in which said road tax is collectable, the sum of Fifty (\$50.00) Dollars to be recovered by an action brought in the name of the state in any justice court of such county, and the further sum of Fifty (\$50.00) Dollars for each refusal or neglect to furnish such list after any demand shall have been made by the county treasurer therefor. Upon the receipt of said lists it shall be the duty of said county treasurer to furnish said employer furnishing such lists printed special road tax receipt books with proper stubs containing memorandum of name, amount and date attached.

Section 4. If any person required to pay the special road tax mentioned in this act does not pay the same and has no property subject to taxation and the person owning the same is in the employment of any other person, the county treasurer must deliver to the employer a written notice, stating the amount of tax due for such employee, and from the time of re-

ceiving said notice the employer is liable to pay said tax, and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee.

Section 13. Whoever obstructs or injures or causes to be obstructed, or injured, any highways, or diverts or causes to be diverted, any water courses thereon, or drain, or causes to be drained, any water from his land upon any highway, to the injury thereof, is liable to a penalty of ten dollars for each day such obstruction or injury remains and must be punished as provided in Section 8736 of the Revised Codes. It shall be the duty of the road supervisor to notify the county attorney of any and all violations of this act.

Chapter 75.—(13th Session)..

Section 10. Said tax commission of which the governor shall be chairman, shall have the power, and it shall be his duty, to have and to exercise, general supervision of the system of taxation and collection of taxes and revenues throughout the state. To require all assessment of property in this state to be made according to law. To advise officers whose duty it is to execute the taxes and revenue laws of the state, when requested by any officer and to inform such officers in relation to their duties with reference to appraisalment, assessment and collection of taxes. To examine all books and papers and to require any person to appear before said board, or any member thereof, and to interrogate such person under oath, or otherwise, for the purpose of enabling the commission or the board of equalization to acquire and obtain all information that could in any manner aid in arriving at the valuation of any franchise or other property taxable in this state. To compel the collection of all inheritance taxes due under the laws of this state. To make such reasonable rules and regulations as the commission shall deem proper effectually to carry out the purposes for which the commission is constituted, and to regulate its own procedure, and to have and use a seal. To require from any state, county or municipal officer, whose duties pertain to appraisalment, assessment, levy or collection of taxes, or the disbursement of public revenues, reports and statements, as to any matter deemed material and relevant, in such reasonable form as may be prescribed, to make an annual appraisalment of property having a situs in this state, of all railroad companies, sleeping car com-

panies, electric and street railway companies, express companies, telegraph companies, telephone companies, refrigerator car companies, oil and tank line companies, heat, light, power, water, gas and electric companies, as may be doing business as one system, partly within this state and partly without said state, or so doing business in more than one county of this state.

Section 11. These several corporations herein enumerated, doing business in this state, are hereby required annually, between the first day of April and the first day of May, to make and file with the state tax commission, in such form as said commission may provide, a statement under oath, to be made by the president, secretary, treasurer, superintendent or chief officer of such corporation, covering the period of at least one year, and not to exceed five years, as may be required by such commission, containing the following facts:

The name of the corporations, the nature of the business conducted by it, the number of shares of its capital stock issued, and the par value of such shares, a detailed statement of all of its physical property, real, personal and mixed of every kind and character, and where the same is situated.

Section 12. Any corporation which shall refuse or willfully neglect to make any statement or report required by this act, within the specified time, shall be subject to a penalty of Five Hundred (\$500.00) Dollars, for each day of continuance of such neglect or refusal to make or file such statements or report, which penalty shall be recovered in a proper action brought in the name of the State of Montana in any court of competent jurisdiction.

Licenses.

2763. III. Each railway company acting in the capacity of a warehouse for the purpose of storing and distributing goods, except any other than the capacity of common carriers, shall pay a license tax of Ten (\$10.00) Dollars per quarter in each county in which said business may be carried on. [Act February 20, 1907.] (10th Sess. Chap. 22).

2777. **Street Railways.**—Every person, corporation or association carrying on the street railway business, by the use of horse, steam, motor or electric power must, in towns of four thousand inhabitants or over, pay a license of Fifty Dollars per quarter, and in all towns of less than four thousand inhabit-

ants a license of Twenty-five Dollars per quarter. [Act approved March 6th, 1897, Sec. 2.] (5th Sess. 202-3.)

2780. **Penalties.**—Every person who commences or carries on a business, trade or profession, or calling for the transaction or carrying on of which a license is required by the provisions of this act; without taking out or procuring a license as herein prescribed, or who violates any of the provisions of this act, shall be punished as provided in Section 8602 (780) of the Penal Code and in addition thereto shall be liable to a penalty of ten per cent. of the amount of said license, which said penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from the prosecution provided for in Section 8602 (780) of the Penal Code. [Act approved March 5th, 1897, Sec. 6.] (5th Sess. 200.)

4331. **Licenses for Ticket Agents.** (See Page 182.)

Chapter 61. (12th. Session.)

“An Act to Amend Section 2773 of the Revised Codes of the State of Montana of 1907, relating to Licenses.”

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 2773 of the Revised Codes of the State of Montana of 1907 be amended to read as follows:

“Section 2773. Every person, corporation or association doing business in this state as a telephone, telegraph or electric company must pay a license in each county where such business is transacted as follows:

1.

Each gas and electric company doing business in cities of more than ten thousand population shall pay a license of Two Hundred (\$200.00) Dollars per year; in cities of five thousand and less than ten thousand population a license of One Hundred (\$100.00) Dollars per year; in cities of less than five thousand a license of Fifty (\$50.00) Dollars per year; and where such companies are consolidated such license shall be paid for each department.

2.

Every telephone company doing business in cities of more than ten thousand population shall pay a license of Four Hundred (\$400.00) Dollars per year; in cities of more than five thousand and less than ten thousand population, a license of

Two Hundred (\$200.00) Dollars per year; and in cities of less than five thousand population a license of One Hundred (\$100.00) Dollars per year.

3.

Each telegraph company shall pay a license of Five (\$5.00) Dollars per quarter for each instrument in use.

4.

Every person, company or corporation selling water in incorporated cities of more than ten thousand population shall pay a license of Four Hundred (\$400.00) Dollars per year; in cities of more than five thousand and less than ten thousand population shall pay a license of Two Hundred (\$200.00) Dollars per year; and in cities of less than five thousand population shall pay a license of One Hundred (\$100.00) Dollars per year; and in towns Fifty (\$50.00) Dollars per year, and where such companies are consolidated such license shall be paid for each department; provided, however, that no license shall be exacted from any person, company or corporation selling water by delivery in packages, cans, bottles, barrels or otherwise than in pipes, conduits, ditches or canals."

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall be in full force and effect from and after its passage and approval.

Approved March 1, 1911.

Chapter 141.—(12th Session).

"An Act Imposing a License Tax on Companies Operating Sleeping Cars."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Every person, association or corporation engaged in the business of operating sleeping cars carrying passengers from one point to another within the State of Montana shall pay into the state treasury, on or before the first day of January of each year, a license tax of one hundred dollars for each car used by it in the conduct of such business.

Section 2. Every such person, association or corporation shall annually, on the 31st day of December of each year, file in the office of the state treasurer a statement of the number of such cars used by it during the year preceding in the conduct of such business and the names of such cars, so far as the same have names, which statement shall be verified by the oath

of some officer of the corporation, testifying to his own knowledge as to the facts therein stated.

Section 3. This act shall be in force and effect from and after its passage and approval by the governor.

Approved March 11th, 1911.

PART IX.

PENAL PROVISIONS; CRIMINAL AND CIVIL PRO-
CEEDURE.

8109. (Sec. 17.) **Felony and Misdemeanor Defined.**—A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court or jury, it is a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

8110. (Sec. 18.) **Punishment of Felony, When Not Otherwise Prescribed.**—Except in cases where a different punishment is prescribed by this code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five years.

8111. (Sec. 19.) **Punishment of Misdemeanor When Not Otherwise Prescribed.**—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

8282. (Sec. 300.) **Offense for Which No Penalty Is Prescribed.**—When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

8283. (Sec. 301.) **Oppression and Injury by an Officer.**—Every officer who, under color of authority, oppresses, wrongs or injures any person, is guilty of a misdemeanor.

8736. (Sec. 1031.) **Injuries to Highways, Private Ways, and Bridges.**—Every person who maliciously digs up, removes, displaces, breaks or otherwise injures or destroys any public highway, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

9013. (Sec. 1566.) **Jurisdiction of an Offense on Board a Vessel or Car.**—When an offense is committed in this state, on board a vessel navigating a river, bay, slough, lake or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in

the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this state, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates.

9537. (Sec. 2570.) **Summons Upon Information Against Corporation.**—Upon a complaint against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

9538. (Sec. 2571.) **Form of Summons.**—The summons must be substantially in the following form:

“County of (as the case may be).

“The State of Montana to the (naming of corporation):

“You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. for (designating the offense generally).

“Dated at the city (or township) of——, this day of——, eighteen——.

“G. H., Justice of the Peace (or as the case may be).”

9539. (Sec. 2572.) **When and How Served.**—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier or managing agent thereof.

9540. (Sec. 2573.) **Examination of the Charge.**—At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

9541. (Sec. 2574.) **Certificate of Magistrate and Return.**—After hearing the proofs, the magistrate must certify upon the complaint, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate, as prescribed in Section 9100 (1693).

9542. (Sec. 2575.) **County Attorney to File Information.**—If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the county attorney may file an information thereof, as in case

of a natural person held to answer, or he may file such information by leave of the court.

9543. (Sec. 2576.) **Appearance and Plea.**—If an indictment is found, or information is filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

9544. (Sec. 2577.) **Fine on Conviction, How Collected.**—When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

9545. (Sec. 2578.) **Summons to Corporation.**—When an indictment is found or an information filed against a corporation, the clerk must issue a summons in its corporate name, commanding it to appear and answer the indictment or information, a copy of which summons must be served on an officer of said corporation, or upon its agent or attorneys designated as the person upon whom service of summons in civil actions may be made, if there be any such in the county where the indictment is found or information is filed; and if there be no officer or designated agent or attorney in the county where the indictment or information is found or filed, then upon any managing agent, ticket agent, clerk, cashier, or secretary, freight agent, superintendent, or general business manager in the county; and if there be none of the above described person in the county, then upon any such persons in any county in the state. Such notice must be served at least five days before the time at which the said corporation is by summons required to appear.

9546. (Sec. 2579.) **Service of Summons.**—When the sheriff or other officer returns the summons, certifying the service thereof, the corporation must on and after the day appointed in such summons for its appearance, be considered in default, and the court must order the clerk to enter appearance for the corporation, and enter the plea of not guilty in the records of the court, and further proceedings may be had thereon as if the corporation had appeared and pleaded not guilty thereto; and if the corporation is convicted, the court must enter judgment for the amount of the fine and costs which may be

awarded against it, in the same manner as on judgment in civil action.

CIVIL PROCEDURE.

6519. (Sec. 636.) **Summons, How Served.**—The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this state, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business and having a managing or business agent, cashier or secretary within this state, to such agent, cashier or secretary, or to a person designated as provided in Section 4414 (1031) of the Civil Code.

3. Any corporation doing business in this state may be served with summons, by delivering a copy of the same to the president, secretary, treasurer or other officer of the corporation, or to the agent designated by such corporation as the person upon whom service shall be made as required by law, and if none of the persons above mentioned can be found in the county, then service may be made upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent or other agent, having the management, direction, or control of any property of such corporation. If none of the persons in this section described can be found in the county in which such action is commenced, then service may be made, as provided in this section, upon any of the persons herein described, in any county of this state.

Chapter 85.—(12th Session.)

“An Act amending Section 6662 of the Revised Codes of Montana of 1907, relating to levy of writ of Attachment.”

Be it enacted by the Legislative Assembly of the State of Montana.

Section 1. That Section 6662 of the Revised Codes of Montana of 1907 be and the same is hereby amended so as to read as follows:

“Section 6662. The sheriff to whom the writ is directed and delivered must execute the same without delay and if the undertaking mentioned in Section 6660 (893) be not given as follows:

1. Real property standing upon the records of the county in the name of the defendant must be attached by filing with

the county clerk a copy of the writ, together with the description of the property attached, and a notice that it is attached.

2. Real property or an interest therein belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein held by or standing in the name of such other person, (naming him) are attached. The county clerk must index such attachment when filed, in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

3. Personal property, capable of manual delivery, must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third party, and such personal property, so in the possession of a third party, may be attached in the same manner as debts or credits and other personal property not capable of manual delivery as hereinafter provided.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company must be attached by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached in pursuance of such writ.

5. Debts or credits and personal property not capable of manual delivery, and personal property in the possession of a third person, must be attached by leaving with the person owing such debt, or having in his possession or under his control such credits and personal property, or with his agent, a copy of the writ and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

6. Judgments standing in favor of and in the name of the defendant upon the records of the clerk of the district court must be attached by leaving with the said clerk of the district court a copy of the writ and a notice stating that the said judgment is attached in pursuance of such writ. The clerk of the district court must index and keep a record of all attach-

ments of judgments hereunder and such attachment is binding on the judgment creditor.

Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

Section 3. This act shall take effect and be in force from and after its passage and approval.

Approved March 4, 1911.

PART X.

LAWS RELATING TO TRANSPORTATION, INSPECTION AND QUARANAINING OF LIVE STOCK AND HORTICULTURE; TRANSPORTATION OF FISH AND GAME.

1804. **Inspection of Horses Before Removal from State.**—From and after the passage of this act, it shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any horse, mule, mare, colt, foal or filly, immediately before the shipment or removal of the same, and at the place from which the shipment is to be made, to cause the same to be inspected by a stock inspector, or the sheriff of the county, from which such stock is to be removed, as hereinafter provided. [Act approved March 11th, 1901, Sec. 1.] (7th Sess. 93.)

1805. **Duty of Stock Inspector.**—On receiving notice from any person that he desires to remove or take from this state to be sold or used outside of this state any of the class of animals mentioned in Section 1804 (1), it shall be the duty of any stock inspector, or the sheriff of the county from which such animals are to be taken, to inspect the same, by carefully noting the brands upon such animals, and otherwise describing such of said animals as may have no brands, and to keep a record of all such inspections in a book to be provided for that purpose by the county commissioners of each county. Such descriptions shall contain:

1. The brands of all animals branded, and a description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.
4. The date of such inspection, with destination to which such animals are to be taken. If in the opinion of the officer making the inspection the person proposing to remove such stock is rightfully in the possession of the same he shall grant such person a certificate of inspection in duplicate, containing the matters herein provided, with the further statement that permission is granted to such person to remove such animals from this state. The person so receiving said certificates must deposit with the agent of the railroad company at the point from which the shipment is made the duplicate certificate referred to, which said duplicate must be filed by the agent, and must be at all times during business hours accessible to the public. The agent must at the time of the receipt of the duplicate indorse upon the original certificate the date of the receipt of the duplicate. If, however, the officers making such inspection, shall be of the opinion that such stock, or any por-

tion thereof, is stolen, or otherwise wrongfully in the possession of the person proposing to remove the same, he shall withhold such certificate and permit to remove, until satisfactory assurance is given him of the rightful possession of such property by the person proposing to remove the same. Such certificate of inspection shall be by the holder thereof exhibited to any person demanding to see the same. [Act approved March 11th, 1901, Sec. 2.] (7th Sess. 94.)

1806. **Penalties.**—Any railroad company or agent shipping or permitting to be shipped from any station, siding or stock yards, without first receiving the duplicate certificate herein provided for, and indorsing on the original the date of its receipt, any of the animals mentioned in Section 1804 (1) of this act, and any person removing or attempting to remove any of said animals without first securing a certificate of inspection, or any person in any other way violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction in any court of competent jurisdiction, shall be fined in any sum not less than Fifty Dollars nor more than Three Hundred Dollars and costs, and in default of payment of such fine and costs, shall be imprisoned in the county jail until such fine and costs are discharged, at the rate now provided by law. The fine herein provided for if collected shall be paid into the county treasury to the credit of the general fund of the county where said conviction is had. [Act approved March 11th, 1901, Sec. 3.] (7th Sess. 95.)

1807. **Fees.**—For the service of inspection herein provided for the officer making such inspection shall receive Three Dollars per day while engaged in making such inspection, and shall receive in addition thereto his necessary actual expenses, to be paid by the person for whom the inspection is made. [Act approved March 11th, 1901, Sec. 4.] (7th Sess. 95.)

1808. **Inspection of Horses Before Removal from One County to Another.**—That, from and after the passage of this act, it shall be the duty of any and all persons, associations or corporations, removing or taking horses, mules or asses from one county to another county in this state, or beyond the boundaries of this state, by railroad, or in any other manner whatsoever, for the purpose of selling such stock, or offering the same for sale at any public sale, to cause the same to be inspected by a state stock inspector or by the sheriff of the county from

which the stock is to be removed, as hereinafter provided, and no railroad company shall accept such horses, mules or asses for shipment unless the shipper shall produce a certificate of their inspection, as herein required; **provided, however,** that the provisions of this act shall not apply to stock removed or taken from one county to another for the purpose of pasturing, feeding or changing of range therefor, nor to stock so removed or taken for the use of any person, association or corporation in the usual and ordinary conduct of their business. [Act approved March 6, 1907, Sec. 1.] (10th Sess. Chap. 125.)

1809. **Duties of Stock Inspector.**—On receiving notice from any person, association or corporation that he desires to remove, ship or take from one county in this state to another county in this state, or beyond the state boundaries, any of the class of animals named in Section 1808 (1), it shall be the duty of the stock inspector or sheriff of such county, from which such animals are to be taken, to immediately inspect the same by carefully noting the brands upon such animals and otherwise describing such animals, and to keep a full and complete record of all such inspections in a book provided for that purpose by the state board of stock commissioners. Such description shall contain:

1. The brands of all animals branded, and the description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.
4. The name of the person, corporation or association, from which the person removing the same made purchase of such animals.
5. The date of such inspection, with destination to which such animals are to be taken, and the means of their transportation.
6. That none of such animals are suffering with any infectious or contagious disease.

If, in the opinion of the officer making the inspection, the person proposing to remove such stock is rightfully in possession of the same and that such animals are not infected with disease, he shall grant such person or persons, corporation or association, a certificate of inspection containing a statement of the matters herein above required, with a further statement that permission is granted to such person to remove such ani-

mals, either from the county or from the state, as the case may be. If, however, the officer or officers making such inspection shall be of opinion that such stock, or any portion thereof, is stolen or otherwise wrongfully in the possession of the person or persons proposing to remove the same, or are infected with disease, the inspection certificate and permit to remove shall be withheld until satisfactory evidence is given to the inspector of the rightful possession of such property by the person or persons proposing to remove the same, and, in case of disease, until the state veterinarian shall have made examination of the animals withheld on account of disease, and made written order and direction respecting their disposition. Such certificate of inspection and permit to remove shall be, by the holder thereof, exhibited to any person or persons demanding to see the same. [Act approved March 6, 1907, Sec. 2.] (10th Sess. Chap. 125.)

1810. **Certificate of Inspection.**—It shall be the duty of the stock inspector or sheriff, immediately upon making the inspection herein required, in case he passes such livestock, to issue the certificate herein provided for, and to immediately transmit a duplicate for such certificate to the state board of stock commissioners, to be by said board held and kept as a permanent record, and, in case he refuses to grant such inspection certificate because of question as to the ownership of the property, he shall immediately notify the state board of stock commissioners of his refusal to grant such certificate and his reasons therefor; and, should he refuse to grant a certificate because of his belief that such livestock are infected with disease, the state veterinary surgeon shall at once be notified and requested to make inspection and examination. [Act approved March 6, 1907, Sec. 3.] (10th Sess. Chap. 125.)

1811. **Penalties for Violation of Act.**—Any person removing or attempting to remove any livestock of the kind named in Section 1808(1) of this act, without first having received the certificate of inspection and removal, herein provided for, and any railroad accepting for shipment any such property, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than Fifty

nor more than Five Hundred Dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this act shall be turned into the state treasury, and placed to the credit of the stock detective and inspection fund. [Act approved March 6, 1907, Sec. 4.] (10th Sess. Chap. 125.)

1812. **Inspection of Cattle to Be Removed from State.**—It shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, or calf, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the state as hereinafter provided; **Provided, however,** that whenever any of the class of stock aforementioned shall be loaded for shipment and consigned to any point where the state board of stock commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this state before shipment. [Act approved February 7, 1907, Sec. 1.] (10th Sess. Chap. 8.)

1813. **Duties of Stock Inspector.**—On receiving notice from any person that he desires to remove from this state to be sold or used outside of the state, any of the class of animals mentioned in Section 1812(1) of this act, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks upon same, and make a report of such inspection to the secretary of the board of stock commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the state, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the state. The person receiving said certificate must deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent

and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate endorse upon it the date of its receipt and filing by him. If, however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this state, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock. [Act approved February 7, 1907, Sec. 2.) (10th Sess. Chap. 8.)

1814. **Penalties for Violation of Act.**—Any railroad company or agent, shipping or permitting to be shipped from any station, siding or stock yards within this state, any of the class of animals described in Section 1812 (1) of this act, without first receiving the aforesaid inspection certificate and endorsing upon it, the date of its receipt and filing, and any person removing or attempting to remove from this state any of the said animals without first securing the certificate of inspection herein provided, and any person who shall load any of such stock for shipment and consign same to any point where the state board of stock commissioners maintain a stock inspector, and who shall then reconsign them enroute to any other points, so as to avoid inspection at point of shipment and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor and on conviction in any court of competent jurisdiction, shall be fined in any sum not less than Fifty (\$50.00) Dollars nor more than Three Hundred (\$300.00) Dollars, or imprisoned in the county jail not to exceed six (6) months, such fine if collected to be turned into the general fund of the county where such conviction is had. [Act approved February 7, 1907, Sec. 3.] (10th Sess. Chap. 8.)

1820. **Shipment of Stray Cattle; Duties of Shipper.**—That every person, agent, firm, corporation, pool or round-up association who shall ship cattle from this state may ship with their own cattle any strays which may be among them, but they shall, before shipment or at the time of loading same on the cars for shipment, carefully and as accurately as possible, inspect or tally the brand on such cattle, whether their own or strays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each

animal, number and class of each brand, destination, name of commission firm to whom consigned, and the name of person in charge of shipment; one copy of this list to be filed with the railroad agent at point of loading, who shall, in turn, forward the same to the board of stock commissioners, at Helena, within two days after shipment, and another copy to be immediately mailed to the state stock inspector at point of destination. [Act approved March 5, 1907, Sec. 1.] (10th Sess. Chap. 94.)

1821. **Description of Animals Taken Out During Shipment.**—That every person in charge of, or who accompanies such shipment as the shipper in charge, shall take an accurate description, including the brands of each and every animal whether dead or alive taken out of shipment in transit between original loading point and final destination, and shall hand such description to the state stock inspector at such point of destination immediately upon arrival of the shipment in the stock yards. [Act approved March 5, 1897, Sec. 2.] (10th Sess. Chap. 94.)

1822. **Powers and Duties of Inspectors Outside of State.**—The stock inspector appointed to inspect Montana cattle at any cattle market outside of this state shall be duly commissioned by the state board of stock commissioners, and shall be qualified and have power and authority to inspect any or all cattle that may come from this state to the market where he may be located, having the same power as other stock inspectors within the state to inspect and seize any stock which he may have reason to believe is stolen, or upon which brands have been altered or obliterated, and shall have authority to take the proceeds of any animal in dispute or bearing altered or burned brands, remitting such proceeds to the state board of stock commissioners, who shall hold same pending a decision as to ownership, and such stock inspector shall, upon receipt of the certified lists mentioned in Sections 1820 (1) and 1821 (2) of this act, make inspection of the cattle so listed, and, if upon comparison of such list with his own inspection, he shall find any difference or discrepancy, he shall make a second inspection of any animal or animals or upon which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct, and he shall forthwith make inspection report to the state board of stock commissioners, stating in detail wherein any

discrepancies with the loading tally exist, and calling special attention to his own inspection of such animal or animals and he shall, on his own report, make mention of any and every animal with the brands thereon which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination; all such reports to be entered in a suitably bound book and be, at all times, open to public inspection. [Act approved March 5, 1907, Sec. 3.] (10th Sess. Chap. 94.)

1823. **State Board of Stock Commissioners to Furnish Blanks.**—The state board of stock commissioners shall have printed the necessary blanks for the tallying of cattle at loading point as provided in Section 1820 (1) of this act, and shall furnish same free to shippers on application. The expense of such printing to be paid out of the stock inspector and indemnity fund. [Act approved March 5, 1907, Sec. 4.] (10th Sess. Chap. 94.)

1828. **Scabies in Horses; Duty of Board.**—In addition to the powers now conferred upon it by law the board of stock commissioners of this state shall have the power and it shall be its duty to determine the existence of and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as scabies, among horses, mules, asses and cattle; and to direct and regulate the handling, dipping or treating of any of the aforesaid classes of livestock when infected with or exposed to the said disease; to make and adopt such quarantine and sanitary regulations to that end as may be by it deemed expedient, **provided**, that all such regulations shall so far as practicable conform to the regulations in that regard of the department of agriculture of the United States as they shall be from time to time promulgated; and to create and define districts within which such disease exists; **provided further**, that in determining the district or districts within this state in which such disease from time to time exists, said board shall co-operate with the said department of agriculture. A majority of said board shall constitute a quorum, and the said board may exercise any of the powers conferred upon it by this act through committees of its own members thereto specially empowered by resolution. [Act approved February 6, 1905, Sec. 1.] (9th Sess. Chap. 7.)

1829. **Infected Districts.**—Whenever the said board shall

from time to time have determined that said disease exists in any such district or districts, and created and defined the same, the same shall be known as an infected district or districts, and the board shall as soon as possible after creating such infected district, cause notice of the creation and of the limits thereof to be given by publication once a week for three successive weeks in some newspaper published within and of general circulation within said district, and if no newspaper be published therein, then in some newspaper published at a point nearest thereto; and thereupon it shall be the duty of all persons owning or having the control of any of the aforesaid classes of livestock within the boundaries of said district, to dip or treat said livestock within said board applicable to said district may require the dipping of all such livestock to be in strict compliance with the regulations of said board, and within such reasonable time after the completion of the publication of the notice of the creation of said district as said board may prescribe. The said board shall, before publishing said notice, as to any created district, prescribe the dipping regulations applicable thereto; and shall publish said regulations with said notice. [Act approved February 6, 1905, Sec. 2.] (9th Sess. Chap. 7.)

1830. **Treatment of Stock in District.**—It shall be the duty of said board of stock commissioners promptly upon the expiration of thirty (30) days after the completion of the publication of notice of the creation of any such infected district, to cause to be seized and gathered and dipped and treated any undipped or untreated livestock of the class named within said district; **provided, however,** that no obligation shall exist or be created by or against the said board on account of the dipping or treating of any livestock by it, but such expenses shall be a charge against and shall be paid by said board out of any sums realized out of the lien of liability by this act created. [Act approved February 6, 1905, Sec. 3.] (9th Sess. Chap. 7.)

1831. **Powers of State Veterinarian.**—The State Veterinarian and stock inspectors shall be subject to the supervision and control of the said board in the exercise of the powers conferred upon it by this act, and they shall accomplish all orders to them by said board directed and perform all duties that may be imposed upon them by the regulations of said board, and to that end whenever necessary, they may enter upon and examine any car, yard, stable, corral, steamboat or any build-

ing or premises to examine any said livestock therein or thereon, and otherwise do whatever may be found necessary and proper therein or thereon to the effectual discharge of their said powers and duties. [Act approved February 6, 1905, Sec. 4.] (9th Sess. Chap. 7.)

1832. **Stock Inspectors; Deputy State Veterinarians.**—The stock inspectors shall be deemed for the purpose of accomplishing the provisions of this act, deputy state veterinarians, and subject to the approval of the department of agriculture of the United States. The inspectors appointed by it may also be appointed deputy state veterinarian by the said board for the purpose of this act, and they shall hold said appointment at the pleasure of said board so long as they remain inspectors of said department and as such are stationed in this state, and they shall act as such deputies without bond or compensation from the state and shall possess all the powers and duties of deputy state veterinarians as needed for the purpose of this act. [Act approved February 6, 1905, Sec. 5.] (8th Sess. Chap. 7.)

1833. **Dipping to Be Under Control of State Veterinarian.**—All dipping shall be under the supervision of the state veterinarian, and every person within the district who shall own or control any of said livestock required to be dipped or treated therein, shall as soon as the same shall have been dipped or treated in conformity with the regulations of said board, be entitled to receive and shall receive from the state veterinarian a certificate in writing to that effect. The said board is hereby empowered and required by regulation to impose and collect a dipping inspection fee to cover the estimated cost of dipping or treating supervision incurred under its regulations. [Act approved February 6, 1905, Sec. 6.] (9th Sess. Chap. 7.)

1834. **Expense a Lien on Stock Treated.**—For all sums paid out by the said board, pursuant to the provisions of this section, and in addition thereto such further sum per head of livestock dipped or treated as in this act provided, as may be fixed by the said board by regulation as a penalty, and for all amounts due on account of dipping supervision it shall have a lien upon all such livestock so dipped or treated and any other livestock of the person owning the same, which lien shall be a first lien and superior to any other lien, claim or demand against said livestock, which said lien the said board shall have power

to enforce by appropriate action and it may further maintain an action to recover from the owner of such livestock the amount of said lien. The board shall cause to be kept in the office of the secretary thereof a record of all sums due to it on account of payments made or expenditures incurred on account of the dipping of any livestock, or on account of dipping or treating supervision, together with the brand of all livestock affected by the lien aforesaid and the name of the owner thereof. A certified copy of such record shall be filed in the office of the county clerk where such owner resides, or where such livestock are, if the owner does not reside in the state of Montana, which shall be deemed to impart notice of such lien. No such lien shall be effective until such certified copy is so filed. [Act approved February 6, 1905, Sec. 7.] (9th Sess. Chap. 7)

1835. **Penalties.**—Any owner or person having control of any of said livestock or any other person whether an officer or employee of said board or a private person who shall wilfully violate any provisions of this act or regulations or orders lawfully made in conformity therewith, or who shall in any manner hinder or obstruct the execution of any such regulation or order, or hinder, resist or obstruct any officer or employee of said board or the state veterinarian or any of his deputies or any stock inspector in the discharge of his duty or in the exercise of his lawful powers or who shall wilfully or negligently break any quarantine, or wilfully or negligently suffer any quarantined animal or animals to escape from quarantine, shall be deemed guilty of a misdemeanor. [Act approved February 6, 1905, Sec. 8.] (9th Sess. Chap. 7.)

1844. (Sec. 3008.) **Importation, When Prohibited.**—Whenever the governor has good reason to believe that any disease mentioned in this article has become epidemic in certain localities in another state or territory, or that conditions exist that render domestic animals and Texas cattle likely to convey disease, he must by proclamation, designate such localities, and prohibit the importation therefrom of any livestock of the kind diseased into this state, except under such restrictions as he, after consultation with the veterinary surgeon, may deem proper. Any person who, after the publication of such proclamation, knowingly receives in charge any animal from any of the prohibited districts, and transports or conveys the

same within the limits of this state, is punishable as provided in Section 8448 (1175) of the Penal Code, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited animals.

PROTECTION OF SHEEP INDUSTRY.

1862. **Enforcement of Quarantine.**—The board of sheep commissioners, and when the board is not in session, the president of said board, or the state veterinary surgeon, may employ persons to take charge of all diseased sheep when in quarantine or otherwise, upon refusal of owners to take proper care and to assist the sheep inspector, and the person so employed shall be under the supervision and control of the sheep commissioner and inspector of that county. [Act approved February 28, 1905, Sec. 9.] (9th Sess. Chap. 45.)

1863. **Duties of Inspectors.**—The inspector must inspect all sheep within his county, which he may have received notice or information are affected with, or have been exposed to any infectious or contagious disease, and in case he finds the same are not so diseased, or exposed, he must make and issue a certificate, stating such facts; but if the sheep are affected with or have been exposed to any infectious or contagious disease, they must be quarantined, and the regulations for their quarantine holding and keeping must be at once made by such inspector, each inspector so appointed must personally supervise the dipping of, or otherwise treating of all scabby or diseased sheep within his county, and appoint the date for each and every dipping. He has the right with the advice and consent of the state veterinary surgeon, to determine and superintend the preparation and mixture of material used in dipping the sheep, and must cause all sheep so quarantined to be distinctly marked with a red letter "S" on the right side. In the discharge of his duties, the inspector shall, so far as practicable, comply with the instruction, rules and regulations prescribed by the state veterinary surgeon, and the board of sheep commissioners. All sheep dipped shall be held in quarantine at least ninety days after the last dipping, or until released therefrom by the inspector upon the order of the state veterinary surgeon. [Act approved February 28, 1905, Sec. 10.] (9th Sess. Chap. 45.)

1864. **Quarantine of Infected Sheep.**—Upon receipt of in-

formation of any of the facts mentioned in the preceding section, or that any sheep within his county are affected with or have been exposed to any infectious or contagious disease, the inspector must immediately cause such sheep and all sheep running in the same flock, or upon the same or contiguous range with them, to be examined, and if found so diseased or exposed to disease, to be quarantined and held within a certain limit or place, to be designated by him, and such sheep must be held in quarantine until the owner or person in charge, or the inspector has eradicated such scab or other infectious disease, and the inspector issues a certificate stating such facts and releasing such sheep from quarantine. When sheep infected with, or which have been exposed to, any infectious or contagious disease, have been kept in any building or corral, the inspector must inspect and quarantine such premises, and prohibit any sheep being placed therein until such premises have been cleaned and thoroughly disinfected, which must be attended to within ten days from date of quarantine. [Act approved February 28, 1905, Sec. 11.] (9th Sess. Chap. 45.)

1865. **Quarantine of Infected Premises and Diseased Animals.**—In all cases of scab, or other infectious or contagious disease among sheep in this state, the state veterinary surgeon, deputy state veterinary surgeon, or inspector, has authority to order a quarantine of the infected premises and diseased animals, or animals exposed to such disease, and to define the limits within which such sheep must be kept, and to prohibit any other animals from being driven into or across or kept within such quarantine limits; **Provided**, that in all cases sheep shipped into this state must be quarantined separately, and in no case shall foreign sheep be mixed or quarantined on the same area with native sheep, and all native sheep must be quarantined within the limits of their accustomed ranges and in case such disease becomes enzootic or epizootic in any locality in this state, the president of the board of sheep commissioners, or the state veterinary surgeon, or the inspector must immediately notify the governor of the state, who must, thereupon issue his proclamation, forbidding any sheep to be transferred from such locality without a certificate from the state veterinary surgeon or inspector, showing such sheep to be free from any infectious or contagious disease, and for-

bidding all persons from driving any other sheep into or across such locality, or keeping or herding them therein. Any sheep going, or being driven into or across such prohibited locality or quarantine premises, shall be deemed exposed to such infectious or contagious disease, and may be declared and detained in quarantine, and if deemed necessary by the state veterinary surgeon or inspector may be dipped. [Act approved March 8, 1907, Sec. 3.] (10th Sess. Chap. 173.)

1866. **Governor May Prohibit Importation of Sheep From Infected Districts.**—Whenever the governor has reason to believe that any of the diseases mentioned in this article or any infectious or contagious diseases has become enzootic or epizootic in certain localities in any other state or territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation designate such localities, and prohibit the importation from them of any sheep into this state, except under such restrictions as he, after consultation with the president of the board of sheep commissioners or state veterinary surgeon, may deem proper. Any person, who, after publication of such proclamation, knowingly receives in charge any such sheep from any of the prohibited districts, or transports or conveys the same to and within the limits of any of the counties of this state, is punishable, as hereinafter provided, and is liable to all damages which may be sustained by any person, by reason of the importation, transportation, or reception of such prohibited sheep. [Act approved February 28, 1905, Sec. 13.] (9th Sess. Chap. 45.)

1867. **Duty of Importers of Sheep to Notify State Veterinary Surgeon.**—Upon the issuing of a proclamation by the governor, imposing restrictions upon the importation of sheep from any other county, state or territory, the owner or person in charge of sheep being shipped or driven into the state of Montana from any country, state or territory against which quarantine has been declared, must forthwith notify, by telegraphic dispatch, the state veterinary surgeon at Helena, Montana, stating from what country, state or territory said sheep are being shipped or driven, the number thereof, and where they will first arrive in this state or be unloaded. [Act approved February 28, 1905, Sec. 14.] (9th Sess. Chap. 45.)

1868. **Inspection of Sheep in Transit.**—Whenever the state veterinary surgeon receives the notice mentioned in the pre-

ceding section, or obtains knowledge that any sheep have been, or are about to be shipped or driven from any state or territory to this state, he shall immediately notify the inspector of the county into which such sheep shall first come or be unloaded; and it shall be the duty of the said inspector to inspect said sheep immediately upon their arrival within his county, and make such order, and take such action with reference thereto as he may deem necessary, as provided in Section 1871 (18) of this act. Whenever any inspector receives notice or information that any sheep have been, or are about to be shipped or driven into this state from any state or territory, it shall be his duty to at once notify the state veterinary surgeon. When any sheep are delivered to any railroad or transportation company, for shipment to this state, as the point of destination, it shall be the duty of such railroad company to notify the state veterinary surgeon, by telegraph, the date of said shipment, the name of the place from which they are shipped, the point of destination, the name of the consignor and the consignee, and the probable date of the arrival of said sheep at the state line of Montana; and when any sheep are billed to be shipped through the state, and afterwards the point of destination is changed to some place within this state, it shall be the duty of the railroad or transportation company, upon receiving a request to change the point of destination, to notify the state veterinary surgeon, by telegraph, giving the name of the consignor and consignee, and the point of destination to which the shipment is changed. [Act approved March 8, 1907, Sec. 4.] (10th Sess. Chap. 173.)

1869. **Payment of Expenses for Inspecting and Caring for Diseased Animals.**—The expenses of inspecting, feeding, holding, dipping, treating, marking and taking care of all sheep inspected, quarantined, dipped or otherwise treated under the provisions of this act, including the fees and expenses of the inspector, on account of services rendered in connection with the same, must be paid by the owner, agent or person in charge of such sheep, and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands, or other claims against such sheep, and the inspector may retain possession of such sheep until such charges and expenses are paid; but such lien shall not be dependent upon possession, and such lien

may be foreclosed in the name of the inspector, by a sale of the sheep, or as many thereof as may be necessary to pay the same and costs of sale at public auction, on ten days' notice, given by posting notices thereof in three public places in said county, or such lien may be foreclosed by an action in any court of competent jurisdiction, or an action may, without foreclosing such lien, be maintained in any court of competent jurisdiction against the owners of such sheep to recover the amount of such charges and expenses; **provided, however,** that for inspecting and dipping sheep which have been within this state six months immediately preceding such inspection, the fees and expenses of the inspector for inspecting and superintending the dipping of such sheep, and all other fees, and expenses of such inspector, connected with such inspection and dipping of said sheep, shall be paid out of the sheep inspection and indemnity fund. [Act approved March 8, 1907, Sec. 5.] (10th Sess. Chap. 173).

1870. **Duty of Railroad Company to Notify State Veterinary Surgeon.**—It shall be the duty of the railroad or transportation company to notify the state veterinary of proposed shipments and their destination, as soon as said railroad or transportation company is notified by the shipper. In no case must any sheep affected with, or having been exposed to any infectious or contagious disease, be removed, or allowed to be removed, from one point to another, within any county, or from one county to another in this state, without a written certificate from the state veterinary surgeon, or an inspector. It shall be unlawful for any railroad company or transportation company, to ship sheep from one place to another, within this state, in cars in which other sheep have been shipped, until such cars have been cleaned and carefully disinfected, under the direction of the state veterinary surgeon, or an inspector, who shall give a certificate of such inspection, which shall accompany the shipment. It shall be the duty of every railroad or transportation company, before cleaning or disinfecting any such car or cars, to give notice to the state veterinary surgeon, at Helena, Montana, at least five days before the cars are to be so cleaned and disinfected; and it shall be the duty of the state veterinary surgeon, upon such notice being given, to inspect, or cause to be inspected by an inspector, on or before such date, such car or cars, so cleaned and disinfected, and to give

the proper certificate therefor. It shall be the duty of every railroad or transportation company in this state to keep all yards, corrals, sheds or buildings in this state, used by such company for holding or feeding sheep in transit, and all cars used for shipping sheep, clean and free from infection from scab, or other infectious or contagious disease; and it shall be the duty of the state veterinary surgeon and inspector to inspect such yards, corrals, sheds, buildings and cars, when deemed necessary, and if the same are infected or exposed to infection from any infectious or contagious disease, to at once notify such company of such fact, and declare such premises and cars in quarantine, and forbid any animals from being placed or kept therein, until the said premises and cars are disinfected; and it shall be the duty of the said company to cause said premises and cars to be thoroughly cleaned and disinfected, under the supervision of the state veterinary surgeon, and if he fails to do so within five days after such notice, the state veterinary surgeon or inspector shall cause said premises and cars to be disinfected. The state veterinary surgeon and the inspector shall have authority to enter into all such cars, yards, corrals, sheds or buildings, for the purpose of inspecting or disinfecting the same. The fees and expenses of the state veterinary surgeon and the inspector, and all expenses incurred in inspecting and disinfecting such premises and cars, shall be a charge against such railroad or transportation company, and may be recovered in a civil action in any court of competent jurisdiction. The notice above mentioned may be served upon the agent or other officer in charge of the station, at which such yards, corrals, sheds, buildings or cars are situated. [Act approved March 8, 1907, Sec. 6.] (10th Sess. Chap 173.)

1871, **Duty of State Veterinary Surgeon to Inspect.**—Within five days previous to the arrival of any sheep into this state, from any other state or territory, the owner or agent in charge of such sheep must report by telegraphic dispatch, to the state veterinary surgeon, at Helena, Montana, stating from what country, state or territory such sheep are shipped or being driven from, the number thereof, and the place where they will first enter the state, and where it is intended to unload them, or, such notice may be given by registered mail, if mailed in time, so that in the ordinary course of mails it will reach the state veterinary surgeon's office five days before such sheep

would reach the state, and the state veterinary surgeon shall, immediately on receipt of such notice, notify the inspector of the county in which the sheep shall first come to be unloaded, and it shall be the duty of such inspector to immediately inspect the same, and to make such order or orders for their quarantine, treatment and dipping as he may deem necessary. [Act approved February 28, 1905, Sec. 18.] (9th Sess. Chap. 45.)

1873. **Fees of Inspectors.**—The inspector in each county shall receive for his services while necessarily employed in the discharge of his duties, not exceeding Eight (\$8.00) Dollars per day, which includes all necessary traveling and other expenses incurred in going to and returning from the place where such inspection is had, or other services performed. [Act approved February 28, 1905, Sec. 20.] (9th Sess. Chap. 45.)

1874. **Authority of State Veterinarian.**—The state veterinary surgeon or deputy state veterinary surgeon shall have authority concurrent with the inspector to inspect and quarantine sheep and do any and all other acts, and make any and all orders that the inspector or sheep commissioner is by this act authorized to do and make, and shall have authority to supervise and direct the action of the inspectors in the discharge of their duties. And the state veterinary surgeon shall have authority to prescribe how sheep shall be dipped or otherwise treated, the kind of dip, which may be any one recognized by the United States bureau of animal industry, and to make rules and regulations for the instruction and guidance of the inspectors in the discharge of their duties. [Act approved February 28, 1905, Sec. 21.] (9th Sess. Chap. 45.)

1877. **Penalties for Violation of the Act.**—Any person who brings, or causes to be brought into this state any sheep infected with scab or other infectious or contagious disease, or who shall violate, or in any manner fail to comply with any order made by the state veterinary surgeon, deputy state veterinary surgeon or inspector, or any proclamation issued by the governor, under the provisions of this act, or who violates or disregards any of the provisions of this act, or who shall in any manner hinder, obstruct or resist the state veterinary surgeon, or deputy state veterinary surgeon, or any inspector, in the discharge of his, or their duties, or shall break any quarantine, or wilfully or negligently permit any sheep to be placed

within the limits of any quarantined premises, or any locality prohibited or quarantined under the proclamation of the governor, shall be deemed guilty of a misdemeanor and shall upon conviction thereof, be punished by imprisonment in the county jail, not exceeding one year, or by a fine not exceeding One Thousand Dollars, or by both such fine and imprisonment, and shall be liable for all damages which may be sustained by any person, by reason of such act or acts, which damages may be recovered by such person in a civil action in any court of competent jurisdiction. [Act approved March 8, 1907, Sec. 8.] (10th Sess. Chap. 173.)

8842. (Sec. 1169.) **Scabby Sheep.**—Every person who removes from one point to another in any of the counties of this state, or from one county to another, any scabby sheep, or any sheep that have been scabby within one year, without the written certificate of the sheep inspector, or the written consent of all the sheep owners or managers along the route, and in the vicinity of the proposed location, is punishable by a fine not exceeding one thousand dollars. This section does not apply to scabby sheep imported into this state and against which quarantine has been declared.

8843. (Sec. 1170.) **Bringing Infected Animals Into State.**—Every person who brings into this state sheep infected with scab other infectious disease, or any horses, mules, asses or cattle infected with any contagious disease, is punishable by a fine not exceeding five hundred dollars.

8844. (Sec. 1171.) **Disobeying Orders of State Veterinary Surgeon.**—Every person who fails to comply with or disregards any lawful order or direction made by the state veterinary surgeon, or deputy, or deputy sheep inspector, under the provisions of the political code, concerning scab and other contagious diseases among sheep, or to prevent the spread of disease among cattle, is punishable by a fine not exceeding five hundred dollars.

8845. (Sec. 1172.) **Receiving and Transporting Diseased Sheep.**—Every person, who, after the publication of the proclamation of the governor of this state, prohibiting the importation of diseased sheep into this state, knowingly receives any such sheep from any of the prohibited districts, or transports the same within the limits of the state, is punishable by a fine not exceeding five hundred dollars.

8846. (Sec. 1173.) **Moving Diseased Sheep.**—Every person in charge of sheep being shipped into this state, against which quarantine has been declared, as specified in the last preceding section, and fails to notify the deputy inspector of the county in which such sheep are brought, or allows any such sheep to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles of any corral in which sheep are regularly corralled, before such sheep are inspected as provided by law, is punishable by a fine not exceeding five hundred dollars.

8847. (Sec. 1174.) **Importing Diseased Cattle Into State.**—Every person who imports into this state any cattle, horses, mules, or asses, after the governor has made proclamation holding in quarantine for the purpose of inspection for contagious or infectious diseases, such animals, and allows the same or any of them to leave the place of their first arrival in this state, until they have been examined by the state veterinary surgeon, and a certificate has been obtained therefrom that such animals are free from disease, or permits any such animals to run at large, or to be removed, or to escape before such certificate has been received, is punishable by a fine not exceeding five hundred dollars. This section does not apply to any animals driven in harness, or under yoke, or ridden by their owners into this state.

8848. (Sec. 1175.) **Receiving or Transporting Diseased Cattle.**—Every person, who, after the publication of such proclamation, knowingly receives or transports within the limits of this state, any animal mentioned in the preceding section, before the certificate mentioned therein has been given, is punishable by a fine not exceeding ten thousand dollars.

8849. (Sec. 1176.) **Obstructing Veterinary Surgeon, Etc.**—Every person who owns or has the custody of any cattle, horses, mules or asses infected with a contagious disease, and fails to immediately report the same to the state veterinary surgeon, or conceals the existence of such disease, or attempts so to do, or wilfully obstructs or resists the said veterinary surgeon in the discharge of his duty as provided by law, or sell, gives away or uses the meat or milk, or removes the skin or any part of such animal, is punishable by a fine not exceeding five hundred dollars.

4308. **Fences and Cattle Guards.**—Railroad corporations.

must make and maintain a good and legal fence on both sides of their track and property, and maintain, at all crossings, cattle guards over which cattle or other domestic animals cannot pass. In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. Provided, that nothing herein shall be construed so as to prevent any person, or persons, from recovering damages from any railroad corporation for its negligent killing or injury to any cattle, or other domestic animals, at spurs, sidings, Y's, crossings and turn tables. [Act approved March 1, 1907.] (10th Sess. Chap. 59).

4309. (Sec. 951.) **Liable for Injury From Negligence.**— Every railroad corporation or company operating any railroad, or branch thereof, within the limits of this state, which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, or mule, or any cow, heifer, bull, ox, steer, or calf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

4311. **Designation of Stations Where Records Are Kept.**— It shall be the duty of any corporation, association, company, person or persons owning, controlling or operating any railroad, or branch thereof, in this state, to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book, and within thirty days after the killing or injuring of any animal or animals, to cause to be entered therein the date when, and the place where the same were killed or injured, as near as may be, together with a description thereof, including the age, color and sex of the same, and marks and brands upon the same as near as the same can be done, which said book shall be kept for the inspection of any person or persons claiming to be interested in the inspection thereof, and shall cause a notice of the station so designated to be filed with the county clerk of the county in which said station is situated; Provided, that

when such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the affidavit provided for by Section 4313 (955) of this Code as amended by an act entitled, "An Act to Amend Section 955 of Chapter III, Title VIII, Part IV, Division I, of the Civil Code of Montana relating to livestock killed or injured and to add to said chapter a section to be known as Section 955," approved March 6th, 1903, may be served on the agent of such station. [Act approved February 21, 1905.] (9th Sess. Chap. 29).

4312. (Sec. 954.) **Penalty.**—Any corporation, association, person or persons so owning, controlling or operating such railroad or branch thereof, failing to designate said station, file said notice, keep said book and make the entries as provided in the preceding section, shall be liable to the owner or owners of the animal or animals so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof, may, in its or their discretion, render verdict and judgment for the amount of the value of any such animal or animals so killed, or the amount of damage sustained by reason of any injury thereto.

4313. **Affidavit of Ownership and Value.**—In case any corporation, association, or company, person or persons shall comply with the provisions of Section 4311 (953), of this chapter, it shall be the duty of the owner or owners of any animal or animals, killed or injured as aforesaid, or his agent, or their agent, within thirty days after information shall have reached him or them of the killing or injury of such animal or animals, to make affidavit of such ownership and the market value of the animal or animals, so killed, or the amount of damages occasioned by such injury, and deliver the same to the person in charge of the said book or station, so designated, and thereupon the said corporation, association, company, person or persons, shall have fifty days within which to pay the amount claimed, and no action shall be instituted for the recovery of the value of or damages to such animals or animal until the expiration of said time. And whenever any of the live stock referred to in this Chapter shall be injured or killed, as therein recited, and the owner or owners thereof, shall thereafter institute an action for the recovery of the loss or damage so sus-

tained by him, or them, the court in which such action shall be brought shall, if the plaintiff in such action recover a judgment against the defendant therein, tax, as part of the costs therein, a reasonable sum to be fixed by the court as a fee to the plaintiff's attorney for conducting said action, which said fee, so fixed and allowed, shall be paid by or collected from the defendant in such action in like manner as other costs, provided, that no such fee shall be allowed by the court or collected from the defendant when it shall appear from the pleadings or proof, in any such action, that the defendant prior to the institution of such action, offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed a sum equal to or in excess of the amount, recovered as damages in said action. [Act approved March 6, 1903.] (8th Sess. Chap. 101.)

4314. (Sec. 956.) **Company May Deposit Value of Animal.**—If any corporation, association, company, person or persons, so owning, controlling, or operating any such railroad or branch thereof, shall kill or injure any animal or animals as aforesaid, and shall tender to the owner or owners thereof, or to his or their agent in that behalf, the amount which they shall deem to be the value thereof, or the damage thereto, as the case may be; or if said railroad, corporation, association, company, person or persons, shall deposit with the board of stock commissioners such amount for the owner or owners thereof; and such owner or owners, or his or their said agent shall refuse to accept the same in settlement thereof, then such owner or owners shall pay all costs incurred in any action instituted, after such tender or deposit, to recover such value or damage, unless he or they shall recover therein more than the amount so tendered as aforesaid.

4315. **Recovery by the Secretary of the State Board of Stock Commissioners.**—That where live stock are killed by railroad corporations in violation of Section 4308 (950) of the Civil Code, as amended by Chapter 29, Laws of 1905, in the event the owner of any such live stock shall not claim or assert claim against any such railroad or railroad corporation for the value of the live stock so killed within six months from the date they are killed, the secretary of the state board of stock commissioners is hereby authorized to demand and receive from such railroad or railroad company payment in damages for such live stock, and the said board of stock commissioners

are hereby authorized and empowered to prosecute in the name of the state, actions against such railroad or railroad companies in any court of competent jurisdiction to recover damages in the event of the failure, neglect or refusal of such railroad or railroad companies to make payment of the amount of the claim upon demand as herein provided. The money so recovered shall be paid over to the secretary of the state board of stock commissioners and shall be by him placed and held in a separate fund and disposed of as herein provided. Such money shall be held by the secretary of the state board of stock commissioners for a period of two years after the date of its receipt, and in the event that the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed within said time the same shall be paid over to the state treasurer of the State of Montana, and be by him placed to the credit of the stock indemnity fund. However, should the owner of the animal killed present and prove his claim within the time herein provided, the secretary of the state board of stock commissioners, or said board, are hereby authorized and empowered to pay such claimant the amount of money to which he is entitled for the animal or animals so killed by any railroad or railroad company, the damages for which have been collected by the said board of stock commissioners or the secretary thereof, as provided in this act. In all actions prosecuted for the recovery of the value of live stock killed under the provisions of this act the plaintiff shall recover all costs. In the event the owner of any animal or animals killed has not presented his claim against the railroad or railroad company which caused the same to be killed, any settlement made or obtained by the state board of stock commissioners or the secretary thereof shall constitute a bar as against any action by the owner of such animal or animals. [Act approved March 9, 1907,] (10th Sess. Chap. 183.)

4316. (Sec. 957.) **Penalty for Driving Animal or Animals Upon Track.**—If the owner or owners, or his or their duly authorized agent or agents, of any animal or animals heretofore mentioned, shall drive the same upon the track of any such corporation, association, company, person, or persons, with the intention to injure it or them, and such animal or animals shall be killed or injured, such owner or owners shall be liable for all injury or damage occasioned by reason of

such act, and shall be punished as provided in the Penal Code.

4317. (Sec. 958.) **Carcass and Hide of Animal.**—In all cases where any corporation, association, company, person or persons, shall be liable to the owners of any animal killed as provided in this chapter, they shall be authorized to skin the same, and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But in case such corporation, association, company, person or persons, so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals and deposit the hide thereof at the station designated for keeping the book and making the entries hereinbefore provided for, during the space of sixty days, for the inspection of persons claiming to be interested therein.

4318. (Sec. 959.) **Regulations Concerning Fences.**—That any railroad corporation or lessee, person, company or corporation operating any railroad in this state which may hereafter fence their right of way, shall make crossings through their fence and over their roadbed along their right of way, every four miles thereof or as near thereat as may be practicable. [Act approved March 2, 1893.]

4319. (Sec. 960.) **Cattle Guards.**—Such openings shall not be less than sixty feet in width. The said railroad company or lessee, person, company or corporation operating any railroad shall place cattle-guards on either side of the said openings, sufficient to prevent any cattle from entering upon the said right of way enclosed. [Act approved March 2, 1893.]

4320. (Sec. 961.) **Openings Under Trestles.**—That the said railroad company, lessee, person or company operating any railroad in addition to the said openings, shall leave unfenced any places where the said railroad runs over trestles that are sufficiently high for cattle to go underneath the same. [Act approved March 2, 1893.]

4321. (Sec. 962.) **Limitations.**—The provisions of this bill shall only apply to grazing country. [Act approved March 2, 1893.]

4322. (Sec. 963.) **Penalty.**—An railroad corporation or lessee, person, company or corporation operating any railroad in this state violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in

any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars. [Act approved March 2, 1893.]

8561. (Sec. 720.) **Animals Killed by Railroads.**—Except as otherwise provided, every person who violates any of the provisions of Chapter III., Title VIII., Part IV., Division I., of the Civil Code, relating to live stock killed or injured by railroads, is guilty of a misdemeanor.

8774. (Sec. 1090.) **Overdriving Animals.**—Every person who overdrives or overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or another, or deprives any animal of necessary food or drink, or neglects or refuses to furnish it such food or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully instigates or in any way engages in any act of cruelty to any animal, is guilty of a misdemeanor.

8775. **Abandonment of Disabled Animals.**—Every person being the owner, or in possession or having charge or custody of a maimed, diseased or infirm animal who abandons and leaves such animal to die in the street, highway or public place, is guilty of a misdemeanor and such animal may be killed by any sheriff or peace officer in a humane manner, and the owner shall be liable for the necessary care of such animal while living and for the cost of disposing of the carcass. [Act approved February 25, 1905.] (9th Sess. Chap. 35).

8776. (Sec. 1092.) **Failure to Provide Proper Food and Drink to Impounded Animals.**—Every person who has impounded or confined any animal and refuses and neglects to supply such animal during its confinement, with sufficient food, shelter and water, is punishable by imprisonment in the county jail not exceeding thirty days, or by a fine not exceeding one hundred dollars; or both.

8777. (Sec. 1093.) **Carrying an Animal in a Cruel Manner.**—Every person who carries, or causes to be carried, in or upon any car, vessel or vehicle, or otherwise, any animal in a cruel manner, or so as to produce torture, is guilty of a misdemeanor.

Chapter 90.—(13th Session).

“An act to amend Section 1840 of the Revised Codes of 1907, relating to the quarantine of domestic animals and Texas cattle; and providing that before declaring a quarantine the veterinary shall exhibit to the owner or person in charge a specimen of the parasite, under microscope, or otherwise, for his inspection.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. That Section 1840 of the Revised Codes of 1907 be and the same is hereby amended to read as follows:

Sec. 1840. In all cases of contagious or infectious diseases among domestic animals of Texas cattle in this state, the state veterinarian has authority to order the quarantine of the infected premises, provided, however, that before quarantine can be ordered against animals, the owner of said animals can if so desired, immediately obtain the option of some licensed veterinary other than the inspector, making said inspection and if, however the two are of a different opinion in regard to condition of said stock, then the state veterinarian shall be called to the locality where the case exists to give a decision, which decision shall be final, and if said stock are found to be infected, it shall be the duty of the state veterinarian to order same dipped on or before the expiration of sixty days, and in case such disease becomes epidemic in any locality in this state, and the state veterinarian has ordered the locality quarantined, he, the state veterinarian must immediately notify the Governor, who must thereupon issue his proclamation forbidding any animal of the kind among which such epidemic exists to be transferred from said locality without a certificate from the state veterinarian showing such animal to be healthy. Provided, however, that when such animals are infected with a disease caused by a parasite which is commonly known, and the exhibition of which to the owner or person in charge will furnish practical information to him of the parasite or disease with which the animals are suffering, and it is practical to exhibit a specimen of such parasite, before declaring a quarantine upon any such premises or animals, the state veterinarian shall, on demand, in person, or by a duly authorized inspector, exhibit to the owner or person in charge of such animals a specimen of the parasite with which they are alleged to be infected, under a microscope, or in such other

manner as to be plainly visible, for his inspection. The expenses of holding, feeding, and taking care of all animals quarantined under the provisions of this act must be paid by the owner, agent, or person in charge of such animals.

Sec. 2. All acts or parts of acts in conflict herewith are hereby repealed.

Sec. 3. This act shall be in force from and after its passage and approval by the Governor.

Approved March 14, 1913.

Chapter 123.—(13th Session.)

“An act to amend Sections 1872 of the Revised Codes of Montana of 1907, relating to dipping sheep temporarily in this state.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Section 1872 of the Revised Codes of 1907 is hereby amended to read as follows: Section 1872. Any sheep that are shipped or driven into this state, with the intention on the part of the owner of holding them within the state longer than is necessary to feed them in transit, which feeding must be done in the railroad stock yards, corrals, or buildings, must be at once quarantined and dipped under the supervision of the state veterinary surgeon or inspector, at the point of entry or unloading, or as near such point as may be deemed safe by the state veterinary surgeon or inspector in charge, without danger of scattering infection, and when so dipped shall be branded with a red letter “S” on the right side. After said sheep are so dipped and branded, they may be moved to the ranch or range where it is the intention of the owner to keep them, providing they can be moved to such ranch or range within ten days, when they must be dipped a second time; provided, that any sheep that are shipped into the state of Montana over any railroad with the intention on the part of the owner of holding them within the state longer than is necessary to feed them in transit (which feeding must be done as hereinbefore provided) may be accompanied by a certificate of a federal veterinarian, setting forth that such sheep are clean, are free from scab or other contagious or infectious diseases; that they come from a locality which is free from scab or other contagious or infectious diseases, and that the cars in which they were shipped were properly disinfected and were free from infection by any of such diseases. Sheep

accompanied by a certificate of such federal veterinarian shall be inspected at the first unloading point in this state under the direction of the state veterinary surgeon, and when accompanied by such certificate and so inspected and found free from scab or other infectious or contagious disease, such animal need not be dipped as hereinbefore provided, but shall be branded with a red letter "S" on the right side, and then be trailed from their final unloading point under the direction of the state veterinary surgeon to their range, which range shall be owned or occupied previously by the owner of said sheep, and thereupon quarantined for a period of not less than ninety days, and as much longer as is necessary at the discretion of the state veterinary surgeon. Provided: That sheep so shipped into the state shall not be trailed through the state for any distance exceeding fifty miles from the point of unloading at which such trailing begins, without being quarantined and dipped as herein first provided. And provided further: That sheep that have been unloaded in transit outside of the state of Montana, shall not be deemed clean or free from scab or other infectious or contagious disease, and shall be quarantined and dipped as herein first provided. And provided further; that sheep driven into this state (which sheep shall be animals that are habitually grazed in this state, or an adjoining state, and not otherwise) may be accompanied by the certificate of a federal veterinarian, as above provided, shall be inspected at the state line under the direction of the state veterinary surgeon of Montana; and before driving such sheep in this state, the owner or person in charge shall procure from the state veterinary surgeon a permit to drive said sheep over a certain route to their destination; which destination shall not exceed seventy-five miles from the state line. If said sheep are accompanied by such certificate, and, upon inspection, are found to be free from scab or other contagious or infectious disease, they need not be dipped, but shall be branded with a red letter "S" on the right side, and shall then be trailed from the state line, under the direction of the state veterinary surgeon to their range, which range shall be owned or previously occupied by the owner of said sheep, and shall be quarantined on such range for a period of not less than ninety days and as much longer as is necessary, in the judgment of the state veterinary surgeon; otherwise, and in either instance,

they shall be quarantined and dipped as herein first provided. And provided further that the state veterinary surgeon may, if in his judgment the circumstances of any particular case, warrant such action on his part, order any sheep shipped or driven into the state to be quarantined and dipped as herein first provided, if, before making such order he shall receive from the executive board of the state board of sheep commissioners, its approval in writing for such action on his part. Provided further that all rams entering the State of Montana from other states, must be dipped twice at an interval of not exceeding ten days, according to the rules as laid down by the Montana sheep commission, at or as near the point of entry as is practical; and after the second dipping, such rams may or may not be quarantined, in the discretion of the state veterinary surgeon.

Sec. 2. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 3. This act shall be in force from and after its passage and approval.

Approved March 18, 1913.

HORTICULTURE.

Chapter 121.—(12th Session.)

Sec. 1923. The said board shall elect from their own number, or appoint from without their number, to hold office at the pleasure of the board, one competent person in each district, to be known and act as inspector of fruit pests. Said inspectors shall be elected with reference to their study, and practical experience in horticulture. It shall be the duty of such inspectors to visit the nurseries, orchards, stores, packing houses, warehouses, and other places where horticultural products and fruits are kept and handled within their respective districts, and to see that the regulations of the state board of horticulture to prevent the spread of fruit pests and diseases of trees and plants, and the disinfection of fruits, trees, plants, grafts, scions, orchard debris, and empty fruit boxes and other material shall be fully carried out and complied with. Said inspector shall have free access, at all times, to all premises where any trees, plants, fruits or horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the state horticultural board, and to order the destruction and disinfection of any or all trees,

plants, fruits or horticultural products or supplies found to be infected with any disease as prescribed or designated by said board.

Sec. 1924. It shall be the duty of every person or persons, corporation or corporations who sell or deliver to any person or persons, corporation or corporations, any trees, plants, vines, scions or grafts not previously inspected under the provisions of this act, to notify the state horticulturist, whose duty it shall be to notify the inspector of said district wherein such vines, etc., etc., are to be delivered at least five days before said goods are to be delivered, giving the date and nursery, or railroad station where said trees, plants, scions, etc. etc. are to be delivered, together with the name of the party or parties who are to receive the same. It shall be the duty of the inspector receiving said notice, to inspect the said trees, plants, grafts, scions, etc., etc., as soon thereafter as practicable, and if the same be found free from any and all diseases and pests, as designated by said state board of horticulture, he shall so certify and attach a certificate of inspection to each lot or bill of trees, grafts, plants, scions, etc., which said certificate must contain a list of the said trees, grafts, scions, vines or plants so inspected. But if any of the trees, grafts, scions, vines or plants so inspected shall be found to be diseased or infested with any of the pests, as prescribed by the said board, then the inspector shall order the disinfection or destruction of said trees, grafts, scions, vines, etc., etc., so diseased or infested, together with all boxes, wrapping or packing pertaining thereto, provided, that when any fruit or nursery stock is condemned by any inspector, said inspector shall notify the owner thereof who may appeal to the state horticulturist and from the ruling of the said state horticulturist to the state board of horticulture whose decision shall be final, and charge and collect the sum of ten dollars (\$10) for the disinfection and inspection of each car load of said nursery stock, and a proportionate sum for less than car load lots as fixed by the board; provided that the state board of horticulture shall have power to designate certain places as quarantine stations, where all nursery stock brought into the state shall be inspected and disinfected; provided, that the provisions of this act shall not apply to any plants known as greenhouse plants and grown under glass. For the inspection of fruit, a fee of two cents per box or package with a maximum fee of five dollars for each

separate lot or car shall be charged and collected. The inspectors shall collect such fees and shall not give certificates of inspection until the fees are paid.

Sec. 1925. If any person or persons in charge or control of any nursery, orchard, store room, packing house, or other place where horticultural products or supplies are handled or kept, shall fail or refuse to comply with the rules and regulations of the said state board of horticulture, or shall fail or refuse to disinfect or destroy diseased or infected trees, plants, scions, vines, grafts, shrubs or other horticultural supplies or products, when ordered so to do, by the inspector of such district, he shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not less than \$25.00 nor more than \$300.00.

Section 1926. It shall be the duty of every owner or manager of every orchard, nursery, store room, packing house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infested with any injurious insect or pest, to immediately upon discovery of the existence of such disease or pest, to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager at his own proper expense to comply with and carry out all the instructions of said inspectors for the eradication of any disease or pest. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$25.00 nor more than \$300.00.

Sec. 1927. If any person or persons, corporation or corporations, shall fail or refuse to forthwith comply with the instructions of said inspector, for the eradication of any disease or pest, said inspector shall proceed forthwith to eradicate such disease or pest and the expense of the same shall become a charge and lien upon the property of such owner.

Sec. 1928. Every person who, for himself or as agent for any other person or persons, corporation or corporations, transportation company or common carrier, shall deliver or turn to any person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions and grafts, without first having attached the inspector's certificate, as provided

in Section 1924 of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than \$25.00 nor more than \$300.00.

Sec. 1929. No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations for any damage to any trees, vines or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector as provided in Section 1924 of this act.

Sec. 1934. Every person who for himself, or as agent for any other person or persons, transportation company or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any fruits without first having attached the inspector's certificate, shall be deemed guilty of a misdemeanor.

Sec. 1937. It shall be the duty of every person, firm or corporation, licensed to do business under this act to notify the state horticulturist of his intention to ship an invoice of fruit trees, plants or nursery stock not previously inspected under the provisions of this act, from one point to another in this state, or from any point without this state into this state. The said notice shall contain the name and address both of the consignor and consignee and the list of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive the goods. Such notice shall be mailed at least five days before the day of shipment.

Sec. 1938. It shall be the duty of each person or corporation offering to sell, or selling and delivering any nursery stock, fruit trees, plants, vines, scions, cuttings, etc., etc., not previously inspected under the provisions of this act, within the State of Montana, to place on each and every package so sold and delivered, a label or card, containing the name and address of both the consignor and consignee, and the invoice of the stock therein contained.

Sec. 1939. Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cuttings, grafts, etc., etc., that have not been inspected by a duly appointed inspector of the state board of horticulture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., etc., without first notifying the

inspector and furnishing him an opportunity to examine, and if necessary fumigate said nursery stock, will be deemed guilty of a misdemeanor and will be subject to fine as further provided in this act.

Sec. 1941. Any person or persons, corporation or corporations, transportation companies or common carriers, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00).

Sec. 1942. The Montana State Board of Horticulture is hereby authorized and empowered to establish a quarantine over any orchard or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said board may establish such rules and regulations governing such quarantine and regulating or restricting the use of such fruits upon the premises or the shipment or disposition of the same as the board may deem necessary to prevent the spreading of such disease or diseases or insect pests.

Any person who shall violate the provisions of this section, or the rules and regulations established by said board of horticulture, or who shall ship or dispose of any diseased or infested fruit, or fruit products in violation of the order of said board of horticulture, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in the sum of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00).

Chapter 61.—(13th Session).

“An act to provide for the prevention of the introduction and spread of insect pests and diseases of horticultural and agricultural plants; and providing the penalties for violations of the provisions of this act.”

Be it enacted by the Legislative Assembly of the State of Montana :

Sec. 1. Whenever the Governor of the state has good reason to believe that any pest, gypsy moth, brown tail moth, Mediterranean fruit fly, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker, or flax wilt or other fruit or plant disease or insect pest dangerous or inimical to the horticultural or the agricultural industry exists in certain localities in another state, territory or country, or that conditions exist that render domestic horticultural stock or agricultural crops or plants likely to become

diseased, he must by proclamation designate such localities and prohibit the importation therefrom of any tubers, plants, nursery stock, fruit or seeds or agricultural crops, plants or seeds likely to introduce or spread infection, contagion or insect pests into the state except under such restrictions as he, after consulting with the state board of horticulture, the commissioner of agriculture or the state entomologist may deem proper.

Sec. 2. Whenever the Governor of this state has good reason to believe that any pest, gypsy moth, brown tail moth, potato wart, potato canker, black scab, potato ellworm, pea weevil, alfalfa weevil, alfalfa blight, flax canker or flax wilt or other plant disease or insect pest, dangerous or inimical to the agricultural industry, exists within any county or locality within the state, it shall be his duty to prescribe and enforce such rules, and regulations as may be necessary to circumscribe, eradicate or control such pests or disease.

Sec. 3. Any person, firm or corporation who after publication of such proclamation knowingly receives in charge any tubers, plants, nursery stock, fruit, seeds or agricultural crops, plants or seeds from any of the prohibited districts and transports, conveys, sells or uses the same, within the limits of this state, is guilty of a misdemeanor and punishable by a fine of not less than ten (\$10.00) dollars or more than five hundred (\$500.00) dollars, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited and diseased tubers, plants, nursery stock, fruits, seeds, or agricultural crops, plants or seeds.

Approved March 8, 1913.

GAME AND FISH.

8806. **Shipping Birds or Game Animals Out of State Prohibited.**—It is unlawful, and is hereby prohibited, for any person, or persons, to ship or take out of the state any of the birds or game animals, or any part thereof, mentioned in sections 1, 2, 3, 4, 5, 6, or 7, of an act to repeal sections 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, and 1144 of the Penal Code of the State of Montana, and to provide further protection to birds,

fish, fur-bearing animals and game, approved March 8, 1897, except as herein provided for. [Act approved February 21st, 1903, Sec. 3.] (8th Sess. Chap. 11).

8807. Permit to Resident to Ship Game or Birds.—Any resident of this state who desires to ship out of the state any of the birds or animals, or parts thereof, mentioned in said act during the open season for the killing of the same, the same having been killed lawfully, shall first procure a permit from the State Game and Fish Warden, said permit stating the name of the consignee and consignor, destination, and number and kind of game that is to be shipped, and said permit shall be presented to the transportation company with the consignment of game. [Act approved February 21st, 1903, Sec. 4.] (8th Sess. Chap. 11.)

8808. Shipment By Non-resident.—Any non-resident of this state who has procured a hunter's license, and who desires to ship out of the state any of the birds or animals, or any part thereof, mentioned in this act, during the open season for killing the same, the same having been killed lawfully, shall present to the transportation company his license, with the consignment of game to be shipped, provided that no one person shall ship in one year more game than it is lawful for one person to kill in a single open season. [Act approved February 21st, 1903.] (8th Sess. Chap. 11.)

8809. Transportation Companies Prohibited From Accepting Shipment Except Upon Permit or License.—It shall be unlawful for any person to ship, or offer for shipment, or for any transportation or common carrier company, or any agent, servant, or employee of any such company, to ship or accept for shipment, any of the game birds, or game animals, or any parts thereof, mentioned in this Act, for transport out of the state except the same be accompanied by a permit issued by the State Game and Fish Warden, as herein provided, or by a non-resident hunter's license. When said permit is presented the company shall compare the description on the same with the consignment of game to be shipped and if the same is correct, the company may accept the consignment, and shall take up the permit and return the same to the State Game and Fish Warden at once. When non-resident hunter's license is presented, the company shall examine the license and if the kind of game offered for shipment is covered by said license, said game may be accepted for shipment; provided that the

amount of game offered for shipment is not in excess of the limit as prescribed by law to be killed by any one person, in any one open season. The company shall endorse upon the back of said license in ink the name of the station from which shipment is made, date, destination, consignee, and the number of each kind of game shipped. The company shall at once notify the state game and fish warden, giving the number of the license, name of holder, shipping station, date, name of consignee, destination, and the number and kind of each kind of game shipped. Should a license be presented with a consignment of game for shipment, and the endorsements on the back of same show that the number of such game as was lawful to be killed by any one person in one single open season, had already been shipped on said license, the company shall refuse to accept same for shipment. It shall be unlawful for any transportation or common carrier company, or any agent, servant or employee of any such company to ship or accept for shipment any large game on a non-resident hunter's small game license, and vice versa. [Act approved February 21st, 1903, Sec. 6.] (8th Sess. Chap. 11.)

8810. Owner Must Accompany Shipment.—It shall be unlawful for any person to ship out of this state any birds, fish, or animals protected by the laws of this state, except when the same shall be in the personal possession of, or carried as baggage or express by the owner thereof, and accompanied by the owner thereof, upon the same train or other conveyance. [Act approved February 21st, 1903, Sec. 7.] (8th Sess. Chap. 11.)

8811. Packages Must Be Labeled.—It is required that all packages containing fish or game shall be labeled in plain letters on the address side of the package, so as to disclose the contents thereof. [Act approved February 21st, 1903, Sec. 8.] (8th Sess. Chap. 11.)

8812. Penalties.—Any person or persons, transportation or common carrier company, agent, servant or employee of any transportation or common carrier company, who shall violate any of the provisions, or any part thereof, contained in Sections 8806 to 8811 (3, 4, 5, 6, 7, and 8) of this act, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or imprisonment in a county jail not less than thirty days, nor more than ninety days, or both such

fine and imprisonment. All game shipped or had in possession in violation of any of the provisions of this act may be seized, confiscated, and disposed of, as provided by law. [Act approved February 21st, 1903, Sec. 9.] (8th Sess. Chap. 11.)

8813. **Shipping Permits. Fees.**—The State Game and Fish Warden shall hereafter make a charge of fifty (50) cents for each and every shipping permit issued by him for the shipment of game or parts thereof out of the state. All money so received shall be turned over by him to the State Treasurer at the time and in the manner prescribed by law and the state treasurer shall place such money to the credit of the fish and game fund. [Act March 2, 1905, Sec. 10.] (9th Sess. Chap. 57.)

Chapter 79.—(13th Session.)

Sec. 8. Any person or persons, or the agent of any stage, express or railway company, or association of persons who shall receive, for transportation or carriage, or shall sell or offer for sale any of the game fish that have been taken or killed contrary to the provisions of this act, knowing or having reason to know or believe that such fish were so illegally caught, taken or killed, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars (\$25.00), nor more than two hundred dollars (\$200.00), or by imprisonment in the county jail not less than ten (10) days, nor more than thirty (30) days, or by both such fine and imprisonment. Provided, however, that any person having in his possession a fishing license for the current year, may ship not to exceed twenty-five (25) pounds of game fish by express, stage, or freight, upon showing said license to the agent of any carrying company.

Sec. 14. The game warden, or any deputy, as well as all peace officers, shall have power to search any person and to examine any boat, conveyance, fish basket, game bag, or game coat, or any other receptacle for game or fish, when he has reason to believe that he will thereby secure evidence of a violation of th law. The state game warden, or any of his deputies, shall, at any and all times, have the power and authority to seize and take possession of any and all birds, animals or fish which have been caught, taken or killed at any time in a manner or for a purpose contrary to law, and such search and seizure may be made without warrant

Sec. 30. That nothing in the provisions of Chapter 4 or 5, Title VIII., of the Political Code of the Revised Codes of Montana of 1907, or of Chapter 136 of the Session Laws of the Twelfth Legislative Assembly, or in any of the other provisions of the laws of Montana, shall be construed to prevent, or shall prevent, the carriage or storage or handling of property, by railroads or other common carriers, free or at reduced rates, for the government of the United States, or of the State of Montana, or for the owner or owners of any fish hatchery within this state, or of any anglers' association, or sportsmen's club organized and existing therein, or of the state fish and game warden, whenever such property is being used for the exclusive purpose of stocking or planting with fish or fish eggs the waters within the State of Montana, or restocking the ranges and forests of the State of Montana with elk, deer, mountain sheep, mountain goats, grouse, ducks, or any of the so-called game animals or birds; and nothing therein shall be construed to prevent, or shall prevent, the issuing of free transportation to, or the free carriage of, or the selling of tickets at reduced rates to any and all persons while actually engaged in transporting fish or fish eggs, or stocking or planting the waters of this state with such fish or fish eggs, or to any and all persons while actually engaged in transporting and caring for any of the game animals or birds herein mentioned for restocking the ranges, forests and public parks of this state.

PART XI.

LAWS RELATING TO FERRIES, NAVIGATION,
DOCKS AND WHARVES.

NAVIGATION.

1326. **What Are Navigable Waters.**—Navigable waters and all streams of sufficient capacity to transport the products of the country are public ways for the purposes of navigation and such transportation. "Provided that this act shall not be so construed as to in any manner effect or impair any rights acquired prior to its passage by any person, association of persons or corporation; and provided further that the right of any person, association of persons or corporation shall not be abridged to take and use any water as now provided by law from any stream or streams for the purpose of irrigation, or any beneficial or industrial pursuit." [Act approved March 22nd, 1901.] (7th Sess. 126-7).

1327. (Sec. 2580) **Steamers Meeting.**—When steamers meet each must turn to the right, so as to pass without interference.

1328. (Sec. 2581.) **Steamers Overtaking.**—A steamer going in the same direction with another steamer ahead of it, must not approach or pass the other within the distance of ten yards; and the steamer ahead must not be so navigated as unnecessarily to bring it within ten yards of the steamer following.

1329. (Sec. 2582.) **Steamers to Carry Signals at Night.**—When any steamer is running in the night time her master must cause her to carry two conspicuous lights; one exposed near her bow and the other near her stern; the latter must be at least twenty feet above her deck.

1330. (Sec. 2583.) **Penalties, What Amount.**—Every master or other person in charge who violates any of the provisions of the preceding sections, incurs a penalty of two hundred and fifty dollars for each offense.

1331. (Sec. 2584.) **Vessels at Anchor to Show Lights.**—Whenever any vessel is at anchor in the night time in any of the harbors or ports within the jurisdiction of this state, the master or other person at the time in charge of the vessel, must cause a conspicuous light shown in her rigging at least twenty feet above her deck, and another light from her taffrail, under the penalty of fifty dollars for each neglect.

1332. (Sec. 2585.) **No Recovery for Collision in Case of Neglect.**—Neither the master nor owner of any vessel can recover damages for injuries to the same or to himself by a collision growing out of a non-compliance upon its part with the provisions of this article.

1333. (Sec. 2586.) **Vessels to Carry What Boats.**—Every vessel propelled by steam, navigating any waters of this state and carrying passengers, must be provided with one life preserver for each person on board, and with two row boats sufficient to carry twenty-five persons each. All which boats must be attached in such a manner that they can be launched at any time for immediate use.

1334. (Sec. 2587.) **Penalty, What Amount.**—The master and owners and each of them, of any vessel not provided with boats as required in the preceding section, are subject to a penalty not exceeding two hundred and fifty dollars.

1335. (Sec. 2588.) **Racing, Penalty For.**—If the master or other person in charge, of a steamer navigating any of the waters of this state and used for the conveyance of passengers, or if the engineer or other person in charge of the boiler or other apparatus for the generation of steam does for the purpose of increasing speed or excelling any other vessel in speed, suffer to be created an undue or an unsafe quantity of steam, he is subject to a penalty of five hundred dollars.

1336. (Sec. 2589.) **Penalties, How Recovered.**—The penalties given by this article may be recovered by the county attorney of any county bordering on the water where the offense was committed or the penalty incurred, to whom notice is first given, and when recovered are to be paid into the treasury of the county. Any judgment recovered hereunder is a lien on the vessel against whose owners or master it is recovered.

8757. (Sec. 1060.) **Obstructing Navigable Rivers.**—Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

Chapter 38.—(11th Session).

“An Act to provide for the erection of dock and wharves on the navigable waters within the State of Montana, and to provide for their management and control.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. Any person or persons owning land bordering upon any of the navigable waters within the State of Montana, is hereby granted a license and permit to build docks and wharves over, across and upon the “lands under water” belonging to the State of Montana. Provided, however, that

such docks and wharves shall be extended out into such navigable water such distance only as may be necessary to permit any and all boats, steamboats and vessels to safely land thereat and discharge and take on its or their cargoes and passengers.

Sec. 2. That all docks and wharves built on any of the navigable waters of the state shall be public docks and wharves, and all boats, vessels and steamboats plying such navigable waters shall have a right to land thereat and take on and discharge its or their cargoes and passengers thereon. Provided, however, the owner of such dock or wharf shall have the right to charge and collect from the owner or owners of such boat, steamboat or vessel, a reasonable compensation therefor.

Sec. 3. The license granted in section 1 of this act to build docks and wharves over and upon the lands under the navigable waters of this state, conveys no title in such lands and such license may be revoked by the State of Montana at any time.

Sec. 4. By the term "land under water" is meant all land under any navigable waters of this state, extending from high water mark or from the meander line where the shores of lakes or streams have been meandered, to the lake or stream.

Sec. 5. The Railway Commission of this state shall have jurisdiction over all docks and wharves within the state and have full power to regulate, determine and fix all dockage and wharfage fees. (Approved February 27, 1909.)

Chapter 147.—(12th Session.)

"An act prohibiting any person, co-partnership or corporation from obstructing the waters of any navigable lake within the State of Montana, to such an extent that the public cannot have free access to the same, and regulating the handling and disposition of logs floated in and upon such navigable lake, and providing punishments for the violation of this act."
Be it enacted by the Legislative Assembly of the State of Montana :

Sec. 1. Any person or corporation who shall run or float saw logs or other timber upon the surface of any navigable lake within the State of Montana, shall not allow such saw logs or other timber to accumulate along the shore, or in any bay, of such navigable lake, in such a way as to obstruct or interfere with free access to any lands lying between high water mark and low water mark of such lake, and between

high water mark and the open waters of such lake so as to leave at all times 150 feet open water along the shore of such lake, except as provided in Section 2 of this act.

Sec. 2. Any person or corporation using the waters of any navigable lake for floating logs or timber, shall so dispose of such logs and timber along the shore, or in any bay, of any such navigable lake within the State of Montana, that a free passageway from high water mark to the unobstructed surface of such lake shall at all times be left open, and such passageway from high water mark to the unobstructed surface of such lake shall at all times be left open, and such passageway shall not be less than one hundred and fifty feet in width of open water along the shore of such lake, provided that said logs may be held at a distance of less than one hundred and fifty feet from the shore, where the land abutting the water is owned by the same party owning the logs, but if such logs occupy the water for a distance of six hundred feet or more along the shore of such lake, then and in that event an open channel not less than one hundred feet in width shall be maintained through said logs from the shore, to the open waters of the lake, and one such open channel shall be maintained for each six hundred feet of the shore line that is so obstructed.

Sec. 3. Any person or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars (\$500.00), or imprisonment in the county jail not exceeding a period of thirty days, or by both such fine and imprisonment.

(Approved March 17, 1911.)

Chapter 63.—(13th Session).

“An act to provide for the inspection of steamboats and all other boats propelled by machinery, sailing craft, ferry boat and barges other than private pleasure crafts, on any of the navigable waters of the state of Montana, to provide for their inspection and for the appointment of an inspector of navigation, to define his duties, to provide for his compensation, and to provide sailing rules for all such boats including pleasure crafts propelled by machinery, and for the general superintendence and control of navigation by the State Board of Railroad Commissioners; Providing penalties for a violation of its provisions, repealing Chapter 105 of the Session Laws of the

Twelfth Legislative Assembly, and all acts and parts of acts in conflict herewith.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. The Board of Railroad Commissioners of the State of Montana, shall appoint some suitable person inspector of steam vessels, other boats propelled by machinery, sailing crafts, ferry boats and barges, other than private pleasure boats, on any of the navigable waters of the State of Montana. Said inspector shall have a practicable knowledge of such boats and vessels and ferry boats as ply the navigable waters of the State of Montana, and shall be experienced in the construction and familiar with the safety appliances of all such boats and their appurtenances.

Sec. 2. The inspector shall annually, or as often as the Board of Railroad Commissioners may order, inspect every steamboat or other barge propelled by machinery, or sailing boat, ferry boat or barge, other than private pleasure boat, and shall examine carefully the hull of such boats and their equipment, and require such changes, repairs and improvements to be adopted and used as he may deem expedient for the safety of all such boats. He shall also fix the number of passengers that may be transported upon any boat; he shall likewise fix the number of tons of freight that may be carried upon any such boat, barge or ferry boat. He shall, whenever he deems it expedient to do so, visit any such boat and examine into its condition or their condition, for the purpose of ascertaining whether such boat or boats have a certificate from the Board of Railroad Commissioners and whether such boats are conformable to and obeying the conditions imposed by this act and by the Board of Railroad Commissioners. The owner, master, pilot and captain or engineer of such vessel or boat shall answer all reasonable questions and give all the information in his or her possession in regard to such boat or boats, or any of them, concerning their machinery and the manner of managing said boat. The said inspector shall examine all life saving appliances and lifeboats carried on any such vessels, steamboats or other boats propelled by machinery, as well as all ferry boats. The inspector shall report the condition of all such boats, life-saving appliances and life boats to the Board of Railroad Commissioners.

Sec. 3. The inspector shall at all times have free access

to any and all of such boats and parts thereof, and shall have free transportation thereon for the purpose of making such inspection; and he is hereby authorized, whenever in his judgment the master, owner, captain or pilot of any of the boats mentioned in this act, has failed to comply with the provisions of this act, or when he deems such boat unsafe, to cause the same to be tied up until such owner, master, captain or pilot shall have complied with the provisions of this act, or until such boat shall have been made safe and seaworthy, as the case may be; and if any such master, owner, captain or pilot or any other persons shall release or cause to be released any such boat, he shall be deemed guilty of a misdemeanor.

Sec. 4. The inspector shall report all of his findings to the Board of Railroad Commissioners of the State of Montana, which said Commission shall thereupon, if in its opinion said boat shall be seaworthy and safe for the carrying of passengers and freight, issue to such boat a certificate or permit to engage in the business of navigation on any of the navigable waters of the State of Montana, and shall likewise issue licenses to any captain or pilot of said boat if in its judgment said captain or pilot is qualified for the duties imposed upon him by the provisions of this act; and said commission shall issue all rules and regulations that may be in its judgment necessary for the safe navigation of all steamboats all boats propelled by machinery, sailboats, ferryboats and barges, including pleasure crafts propelled by machinery navigating on any of the navigable waters of this state.

Sec. 5. No greater number of passengers shall be transported upon licensed boat, steamboat or other boat propelled by machinery, or sailing-boat, or ferry boat or barge, than the number allowed in the certificate to such boat, vessel, steamboat, or other boat propelled by machinery, or sailing boat, ferry-boat or barge, and any captain, pilot, owner or engineer of such boat who shall violate any of the provisions of this section shall be guilty of a misdemeanor and shall be punished accordingly, and shall have (at the discretion of the Board of Railroad Commissioners) his license revoked.

Sec. 6. All steamboats to which this act shall apply shall be so constructed that all woodwork about the boiler, smoke-stack, fire-boxes, chimneys, cookhouses, stoves and stove pipes exposed to ignition shall be so shielded by some incombustible material that the air shall circulate freely between such ma-

terial and woodwork or other ignitable substance, and before granting the certificate of inspection the Board of Railroad Commissioners shall require that all necessary provisions be made as it may deem expedient to guard against loss or damage by fire.

Sec. 7. The following rules shall be observed in navigating steam vessels, steam boats and all other boats propelled by machinery, and sailing crafts on any of the navigable waters of the State of Montana affected by the provisions of this act.

Rule 1. All steamboats or other boats propelled by machinery shall be equipped with either steam or compressed air whistles.

Rule 2. When two boats are meeting, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

Rule 3. When two boats are crossing so as to involve risk of collision, the boat which has the other on her starboard shall keep out of the way of the other.

Rule 4. When a steamboat or boat propelled by machinery and sailing boat are proceeding in the same direction so as to involve risk of collision, the boat propelled by machinery shall keep out of the way of the sailing craft.

Rule 5. When, by any of these rules one of the two of the vessels is to keep out of the way, the other shall keep her course and speed.

Rule 6. Every boat propelled by machinery under way and approaching another boat or vessel of any kind so as to involve a risk of collision, shall slacken her speed, or, if necessary, shall stop and reverse her engine, and every boat propelled by machinery shall, when in a fog, go at a moderate speed.

Rule 7. Any boat propelled by machinery overtaking another boat propelled by machinery shall keep out of the way of the last named boat.

Rule 8. When two boats propelled by machinery are going in the same direction and the stern boat wishes to pass the other, she shall signal the forward boat of her intention to pass on the port side, by two distinct whistles, and to pass on her starboard side by one distinct whistle, which shall be answered by the forward boat by the same number of whistles, and the forward boat shall keep on her course as if no signal had been given.

Rule 9. When two steamboats or other boats propelled by machinery are approaching each other, and if the course of such boats is so far on the starboard side of each other as not to be considered by the pilot as meeting end on or nearly so, or, if such boats are approaching each other in such a manner that passing is not as in Rule 2, being deemed unsafe, the pilot of one boat shall give two short and distinct blasts of his whistle, which the pilot of the other boat shall answer by two blasts of his whistle, and they shall pass to the left (on the starboard side) of each other.

Rule 10. Steamboats or other boats propelled by machinery approaching each other at not less than 300 yards distance from each other shall give a signal with one loud distinct whistle.

Rule 11. When two steamboats or other boats propelled by machinery are approaching each other and the pilot of either boat fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short blasts of his whistle, and if the boats shall have approached within 500 yards of each other, both shall immediately slow up to a speed barely sufficient for steerage or until the proper signals are given, answered and understood or until the boats have passed each other.

Rule 12. When a steamboat or other boat propelled by machinery is in a fog or is in thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals of not to exceed one minute.

Rule 13. Signals of distress shall be four blasts of the whistle and shall be recognized by the master of any steamboat or other boat propelled by machinery hearing the same, and he shall render such assistance as in his power.

Rule 14. Any steamboat or other boat propelled by machinery landing at a wharf or dock, shall have the right to such wharf or dock for a period of five minutes. If detained at the wharf or dock for a longer period than five minutes, the steamboat or other boat propelled by machinery already at the wharf shall allow another steamboat or other boat propelled by machinery to land along side and discharge her passengers and freight over her deck for at least ten minutes and

thereafter until the first steamboat or other boat propelled by machinery shall leave said wharf or dock.

Rule 15. In the construing of these provisions, due regard must be had for all of the dangers of navigation and to any special circumstances which may render a departure therefrom necessary in order to avoid immediate danger.

Rule 16. Every steamboat or other boat propelled by machinery which is under sail and not under steam, is to be considered a sailing vessel, and any or every vessel under steam or propelled by machinery, whether under sail or not is to be considered a steam vessel.

Rule 17. All steamboats or other boats propelled by machinery licensed under the provisions of this act or article shall conform to and obey such other rules and regulations not inconsistent herewith as the Board of Railroad Commissioners may direct.

Rule 18. Every steamboat or other boat propelled by machinery on the navigable waters within the jurisdiction of this state, shall have two copies of this section framed; one to be posted in the pilot house and the other to be hung in a conspicuous place on the vessel for the inspection of passengers.

Sec. 9. The master or pilot in charge of the steamboat, or other boat propelled by machinery, or sailing craft, when navigating any of the waters of this state, shall between sunset and sunrise cause said boats to carry the following lights: First: At the foremost head, a bright white light of such a character as to be visible on a dark night, in a clear atmosphere at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an area of the horizon to twenty points of the compass, and to be so fixed as to show the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. Second: On the starboard side a green light of such a character as to be visible on a dark night with a clear atmosphere, at a distance of at least two miles, and be so constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. Third: On the port side a red light of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles, and so

constructed as to show a uniform and unbroken light over an arc of the horizon to ten points of the compass and so fixed as to throw the light from right ahead to two points abaft to the beam on the port side. The red and green lights shall be fixed with screens so as to prevent them from being seen from the rear.

Sec. 10. Every steamboat or other boat propelled by machinery, other than private pleasure boats, shall be provided with a force pump or an equivalent apparatus for throwing water, and the same shall be at all times during the navigation of such boat, kept ready for use. Such pump shall be of suitable size and construction to use either in extinguishing fires or pumping water out of the boat, and shall be approved by the Board of Railroad Commissioners.

Sec. 11. Every steamboat or other boat propelled by machinery, and sailing craft or ferry boat affected by the provisions of this act, shall carry on their deck, hung from davits, such lifeboats, or other boats as shall be ordered by the Board of Railroad Commissioners. And every captain shall order and hold a practice drill for the lowering of lifeboats and fire drill at least once every month, and shall keep a record of all such drills, which record shall be kept in a convenient place on such boat and shall at all times be subject to inspection by the public.

Sec. 12. Every steamboat or other boat affected by this act, shall have a life preserver for each passenger, and she shall also carry one for each of her crew. Such life preserver shall be made of good, sound cork blocks, easily adjusted to the body with belts and straps, properly attached, and so constructed as to pass the cork under the shoulders and around the body of the person wearing the same. Each life preserver shall contain at least six pounds of good cork, having a bouyancy of at least four pounds to each pound of cork. It shall be the duty of the inspector, to satisfactorily ascertain that every life preserver is as herein required. All such life preservers shall be kept in a convenient place, accessible in case of accident, in readiness for immediate use, and the place where same are kept shall be designated in the certificate issued by the Board of Railroad Commissioners and pointed out by printed notices posted in such places as the Board of Railroad Commissioners may direct.

Sec. 13. The state boiler inspector shall inspect all steam boilers in each of the steamboats within the state.

Sec. 14. Every steamboat or other boat propelled by machinery or sailing craft subject to the provisions of this act shall have her name printed on her stern, in either black, yellow or red letters, of not less than three inches in length.

Sec. 15. If any boat subject to the provisions of this act shall be deprived of the services of any licensed officer without the consent, fault or collusion of the master, owner, or person interested in such boats, the Board of Railroad Commissioners shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

Sec. 16. The owner of every steamboat or other boat propelled by machinery, sailing-boat, ferry boat or barge, subject to the provisions of this act, shall pay the Board of Railroad Commissioners, for the use and benefit of the state, an inspection fee on such boats, as follows, to-wit: For each boat under ten tons burden, ten (\$10.00) dollars; for each boat over ten tons burden and under twenty tons burden, fifteen (\$15.00) dollars; for each boat over twenty tons and under fifty tons burden, twenty (\$20.00) dollars; for each boat over fifty tons and under one hundred tons burden, twenty-five (\$25.00) dollars; and all over a hundred tons burden, thirty (\$30.00) dollars. For each ferry boat, ten (\$10.00) dollars, and for each barge, ten (\$10.00) dollars.

Sec. 17. For every license granted under the provisions of this act, there shall be charged and collected from the person, receiving such license, for the use and benefit of the state, the sum of five (\$5.00) dollars, which said license shall remain in full force for one year from the date thereof.

Sec. 18. The inspector shall receive for all services by him, under the supervision of the Board of Railroad Commissioners, in full for such services as inspector, the sum of twelve hundred, (\$1,200.00) dollars per annum, and no other or further fee or compensation. The fees for the inspection shall be paid at the time of the inspection. All fees for licenses shall accompany the application for such license, and in case such license is not issued, the fees shall be returned to applicant; all fees to be accounted for and paid over to the state treasurer monthly.

Sec. 19. It is hereby made the duty of the Board of Railroad Commissioners, to enforce the provisions of this act, and said Board of Railroad Commissioners shall have the jurisdiction to make all needful rules providing for the safety of all passengers, crews and freight traveling or being transported upon the navigable waters of this state, provided that such rules are within the provisions of this act.

Sec. 20. It shall be unlawful for any person or persons to operate any steamboat or other boat propelled by machinery, sailing craft or ferry boat, or engage in the business of the navigation of boats, without first complying with the provisions of this act.

Sec. 21. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not less than twenty-five (\$25.00) dollars, nor more than three hundred (\$300.00) dollars or imprisoned in the county jail not exceeding six months; and in addition thereto the Board of Railroad Commissioners may revoke or suspend the license of any captain or pilot of any boat navigated in violation of the provisions of this act.

Sec. 22. Chapter 105 of the Session Laws of the Twelfth Legislative Assembly and all acts and parts of acts in conflict herewith are hereby repealed.

Sec. 23. This act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1913.

TOLL ROADS AND BRIDGES.

1450. (Sec. 2795.) **Character of Bridges.**—All bridges constructed under this act crossing navigable streams must be so constructed as not to obstruct navigation, and every bridge erected under the provisions of this act, must have good substantial railing or siding, at least four and one-half feet high. [Act approved March 2, 1893.]

1451. (Sec. 2796.) **Navigation Must Not Be Obstructed.**—The owner of any toll bridge across any navigable or navigated stream must at all times keep the channel above and below the bridge clear from all deposits occasioned by its erection and prejudicial to such navigation, and is liable to pay to all persons unreasonably hindered or delayed in passing such bridge with rafts or vessels all damages sustained thereby. [Act approved March 2, 1893.]

FERRIES.

1457. (Sec. 2820.) **Ferries Between Counties.**—When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of that county situated on the left bank descending such river, creek or slough.

1458. (Sec. 2821.) **Notice of Application.**—The board of commissioners must not grant authority to erect a toll ferry until the notice of such intended application has been given as required in this article.

1459. (Sec. 2822.) **Application for Leave and Notice.**—Every applicant for authority to erect and take tolls on a public ferry must publish notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing under oath to the board of commissioners of the proper county, the landings of the proposed ferry must be described and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

1460. (Sec. 2823.) **The Hearing.**—At the hearing, proof of giving the notice, required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of the ownership of the landing, or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of ten years.

1461. (Sec. 2824.) **Duty of Board of Commissioners.**—The board of commissioners granting authority to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county, and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof.

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three dollars nor over one hundred dollars per month, payable annually.

3. Fix the rate of tolls which may be collected for crossing the ferry.

4. Make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make. The board of commissioners may, at any time they see fit, authorize and maintain fords across any water within any distance of any ferry.

1462. (Sec. 2825.) **Report of Owner or Keeper of Ferry.**—

Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection and equipment of the ferry.

2. The repairs made during the preceding year and the actual cost thereof.

3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business.

4. The amount of tolls collected, and

5. The estimated actual cash value of the ferry, exclusive of the franchise.

1463. (Sec. 2826.) **Power and Duty of Commissioners in Regard to Ferry.**—The board of commissioners may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character and how propelled.

2. The number of hands, boatmen or ferrymen, to be employed and rules for their government.

3. When and under what circumstances to make trips in the night time.

4. Who may be ferried free of toll.

5. In what cases of danger or peril not to cross.

6. Penalties for violation of regulations.

7. In case of steamboats, the rate of speed.

8. The method of and preference in loading and crossing; and

9. How and by whom action must be brought to recover penalties.

1464. (Sec. 2827.) **All Passengers Must Be Accommodated.**—Subject to the foregoing regulations ferry keepers must make trips to accommodate all passengers who desire to cross, and any failure so to do subjects the franchise to forfeiture, by a proper proceeding for that purpose.

1465. (Sec. 2828.) **Penalties Recovered, How Paid.**—Penalties recovered under this article must be paid to the county treasury for the use of the general road fund of the county.

1466. (Sec. 2829.) **Bond to Be Given.**—The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners with one or more sureties and conditioned that the ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the state and all legal orders of the board of commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the board of commissioners.

1467. (Sec. 2830.) **When Ferry Unites Two Counties, Tax How to Be Paid.**—The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting it, and the license issued, but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received annually.

1468. (Sec. 2831.) **Interested Commissioner Must Not Act.**—When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

1469. (Sec. 2832.) **Ferry Within One Mile of Another, When.**—No toll ferry must be established within one mile immediately above or below a regularly established ferry, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll ferry, as in this section provided, must be served upon the proprietor of the ferry already estab-

lished at least ten days prior thereto, giving the time and place and grounds of such application.

1470. (Sec. 2833.) **Owner of Land Preferred.**—The owner of the land on either of the waters to be crossed, and the owner of the land on the left bank descending, over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant such authority to another.

1471. (Sec. 2834.) **How Lands Acquired for Use of Ferry.**—When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

1472. (Sec. 2835.) **Must Post Rates of Toll.**—The owner of every ferry must have the rates of toll as fixed by the board of commissioners, printed or written, and posted up in some conspicuous place on or near the ferry.

1473. (Sec. 2836.) **Keep Banks in Repair.**—All ferry keepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

8833. (Sec. 1160.) **Obstruction Ford Near Ferry.**—Every person who owns and conducts a ferry, and who obstructs any ford at or near his ferry, or excludes or prevents the public from the free use of such ford, and who in any manner obstructs such ford, is punishable by a fine not exceeding one hundred dollars.

Chapter 33.—(11th Session.)

“An act to empower counties to establish and maintain public ferries and wharves, and to establish regulations therefor.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. When it shall be made to appear by petition to any board of county commissioners in this state that it is necessary to keep and maintain a public ferry across, or a wharf at any unfordable stream, lake, estuary, or bay, any county within

the state, through its board of county commissioners, is hereby authorized to construct, or to acquire by condemnation or purchase, and to operate, maintain, direct, regulate and control the operation of a ferry across, or a wharf at, any unfordable stream, lake, estuary, or bay within, or bordering on said county, together with all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining thereto, with full jurisdiction and authority to operate and maintain the same free or for toll.

Sec. 2. The board of county commissioners, in the exercise of the power herein bestowed, may acquire real property, as provided in the Code of Civil Procedure, Title VII, Part III, provided that no county ferry or wharf shall be established or maintained with a landing place in any incorporated town or city, which, by its charter is vested with the power to build and regulate ferries, wharves or landings at the foot of streets terminating at a river or harbor.

Sec. 3. When public ferries, if constructed, would unite two counties, the boards of county commissioners may act jointly to construct, maintain and operate any such ferry or ferries, provided that each county shall acquire its own landings and approaches, and maintain the same separately. Where ferry-men are employed on joint ferries, each county board shall receive a quarterly report from said ferryman, giving such information as the board of county commissioners of either county may require.

Sec. 4. The board of county commissioners may employ one or more ferrymen to operate free or toll ferries, and the board may lease any ferries or wharves to a company, firm, or individual, to be operated for the use of the public, and said company, firm, or individual shall give bond in an amount deemed sufficient by the board of county commissioners, and conditioned for the careful and business-like operation of such ferry or wharf, in accordance with law and the regulations of said board.

Sec. 5. The board of county commissioners shall make all needful rules and regulations for the government and operation of county ferries, alter and fix rates of toll, and fix the amount of rental when leased to individuals or companies; and in all cases the rate of toll shall be printed in legible form and posted upon the boat and at the landing places.

Approved February 26, 1909.

ACTIONS AGAINST BOATS.

6969. (Sec. 1450.) **For What Boats May Be Attached.**—Any boat found within the waters of this state is liable:

1. For all debts contracted by the master, owner, agent, clerk or consignee thereof, on account of supplies furnished for the use of such boat; or on account of work done or materials furnished in building, repairing, fitting out, furnishing, or equipping such boat.

2. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or any contract relative to the transportation of persons or property, entered into by the master, owner, agent, clerk, or consignee thereof.

3. For all injuries to persons or property by such boat, or by the officers or crew, done in connection with the business of such boat.

6970. (Sec. 1451.) **Claims That Are Liens Upon Boats.**—Claims growing out of any of the above causes are liens upon such boat, its apparel, tackling, furniture and appendages, including barges and lighters, if owned by the owners of such boat, and used therewith, at the time suit is commenced.

6971. (Sec. 1452.) **Priority of Liens.**—Such liens shall take preference of any claim against the boat itself, or any or all of its owners, growing out of any other causes than those above enumerated, and as between themselves they shall be preferred in the following order:

1. Those resulting from wages for their services on board such boat within the year then passed; providing, that such suit is brought within twenty days after the cessation of such labor.

2. Those resulting from contracts made within this state.

3. All other causes.

6972. (Sec. 1453.) **Limitation of Actions Against Boats.**—Actions against boats under the provisions of this Chapter shall not be brought after the lapse of one year from the time the cause of action accrued.

6973. (Sec. 1454.) **When Lien to Attach.**—The lien shall attach from the commencement of the suit, subject only to such other liens as are of a preferred class.

6974. (Sec. 1455.) **Liability of Rafts; Proceedings Same As Against Boats.**—Any raft found in any of the waters of

this state shall be liable for all debts contracted by the owner, clerk, pilot or agent thereof, on account of work done or services rendered for such raft. Claims growing out of either of the above causes shall be a lien upon the raft, its tackling and appendages, for the term of twenty days from the time the right thereof accrued, and the same rules shall govern, and the same process shall be had, that are prescribed for similar liens against boats.

6975. (Sec. 1456.) **Proceedings, How Commenced.**—Any person desiring to take the benefit of this chapter shall file with the clerk of any court, or justice of the peace, having jurisdiction, a complaint in writing, duly verified by the plaintiff, or his agent or attorney, which complaint shall show that the plaintiff is entitled to the benefit of this chapter; whereupon such clerk, or justice of the peace, shall issue a writ of attachment to the proper officer, commanding him to seize the boat, its tackling, apparel, furniture, and appendages, and retain the same until released by due course of law.

6976. (Sec. 1457.) **Description of Boat.**—The complaint shall describe the boat by name as defendant, but if it have no name, then by such description as will enable the officer attaching to seize the proper property.

6977. (Sec. 1458.) **Summons, How Served.**—The usual summons shall be issued, directed to the boat by name, or to the property to be attached, if no name appear, and be served upon the master, owner, clerk, agent, or consignee thereof, and if none of them can be found, by posting up a copy in some conspicuous part of the boat, or property to be attached. The writ shall be served according to the directions it contains.

6978. (Sec. 1459.) **Who May Serve Summons.**—Any sheriff, constable or city marshal, may serve the writ and summons above mentioned, whether the same issue from the office of the clerk, or from a justice of the peace, and any clerk or justice may, in his discretion, appoint any suitable person to serve such summons and writ, who shall have all the power of a sheriff in the premises.

6979. (Sec. 1460.) **Who May Appear for Defendant, no Continuance Granted Plaintiff.**—Any master, agent, clerk, consignee, or other person interested in the boat, may appear by himself, his agent or attorney, for the defendant, and conduct the defense of the suit, and no continuance shall be granted to the plaintiff while the boat is in custody.

6980. (Sec. 1461.) **Boat May Be Discharged Before Judgment by Giving Bond.**—The boat may be discharged at any time before final judgment by giving bonds with at least two sureties, to be approved by the officer serving the writ or by the clerk or justice who issued it, in a penalty double the plaintiff's demand and costs, conditioned that the obligors will pay the amount found due to the plaintiff with costs.

6981. (Sec. 1462.) **Execution Against Boat.**—If judgment be rendered against the boat before it is discharged, as provided in the last section, execution shall be issued against it, together with its apparel, tackling, furniture and appendages.

6982. (Sec. 1463.) **What Officer May Sell to Satisfy Execution.**—The officer may sell any of the furniture and appendages of the boat, if by doing so he can satisfy the demand; if he sell the boat itself he must sell it to the bidder who will advance the amount necessary to satisfy the execution for the lowest fractional share of the boat, unless the person appearing for the boat require a different and equally convenient mode of sale.

6983. (Sec. 1464.) **Status of Purchaser of Fractional Interest.**—If the fractional share of the boat be thus sold, the purchaser shall hold such share of interest jointly with the owners.

6984. (Sec. 1465.) **Plaintiff's Right to Otherwise Sue not Affected.**—Nothing herein contained shall affect the right of a plaintiff to use in the same manner as in other cases, notwithstanding the provisions of this chapter.

6985. (Sec. 1466.) **Sufficient Allegation That Services Were Rendered Boat.**—It shall be sufficient for the plaintiff to allege in his complaint or affidavit that the services were rendered or material was furnished the boat by its name.

PART XII.

LAWS RELATING TO WATER, HEAT, LIGHT, POWER, STREET RAILWAY, TELEGRAPH AND TELEPHONE COMPANIES. ALSO LAWS RELATING TO POWERS OF CITY COUNCILS OVER RAILROADS AND PUBLIC UTILITIES.

Chapter 52.—(13th Session.)

“An act making the Board of Railroad Commissioners of the State of Montana ex-officio a public service commission for the regulation and control of certain public utilities, prescribing the manner in which such public utilities shall be regulated and controlled, requiring such public utilities to furnish reasonably adequate service and facilities. Prohibiting unjust and unreasonable charges for services rendered by such public utilities, providing penalties for violation of the provisions of this act, authorizing such public service commission to appoint an expert engineer and to employ clerks and assistants and making an appropriation for carrying out the provisions of this act.”

Be it enacted by the Legislative Assembly of the State of Montana :

Sec. 1. A public service commission is hereby created, whose duty it shall be to supervise and regulate the operations of the public utilities hereinafter named, such supervision and regulation to be in conformity with this act.

Sec. 2. The Board of Railroad Commissioners of the State of Montana shall be ex-officio, the public service commission hereby created, and for the purposes of this act shall be known and styled “Public Service Commission of Montana.” It shall provide itself with a seal bearing these words, by which its official acts shall be authenticated in all cases where a seal is required; and in the name as above set forth, it may sue and be sued in the courts of the state and of the United States. The secretary of the Railroad Commission of Montana shall act as secretary of the commission hereby created, but the business of the public service commission shall be kept entirely separate from that of the Railroad Commission.

Sec. 3. The term “Public Utility,” within the meaning of this act shall embrace every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate or control any plant or equipment, or any part of a plant or equipment within the state for the production, delivery or furnishing for or to other persons, firms, associations, or corporations, private or municipal, heat, street railway service, light, power in any form or by any agency, water for business, manufacturing, household use, or sewerage service whether within the limits of municipalities, towns and villages, or elsewhere; telegraph

or telephone service, and the public service commission is hereby invested with full power of supervision, regulation and control of such utilities, subject to the provisions of this act and to the exclusion of the jurisdiction, regulation and control of such utilities by any municipality, town or village.

Sec. 4. In addition to the modes of procedure hereinafter prescribed in particular cases and classes of cases, said commission shall have power to prescribe rules of procedure, and to do all things necessary and convenient in the exercise of the powers by this act conferred upon the commission; provided, that nothing in this act shall be construed as vesting judicial powers on said commission, or as denying to any person, firm, association, corporation, municipality, county, town or village the right to test in court of competent jurisdiction, the legality or reasonableness of any fixed order made by the commission in the exercise of its duties or powers.

Sec. 5. Every public utility is required to furnish reasonable adequate service and facilities. The charge made by any public utility for any heat, light, power, water, telegraph or telephone service, produced, transmitted, delivered or furnished, or for any service to be rendered as, or in connection with any public utility shall be reasonable and just, and every unjust and unreasonable charge is prohibited and declared unlawful.

Sec. 6. The commission may, in its discretion, investigate and ascertain the value of the property of every public utility actually used and useful for the convenience of the public. In making such investigation the commission may avail itself of all information contained in the assessment rolls of various counties, and the public records of the various branches of the state government or any other information obtainable, and the commission may at any time of its own initiative make a revaluation of such property.

Sec. 7. (a) Every public utility shall keep and render to the commission, in the manner and form prescribed by the commission, uniform accounts of all business transacted.

(b) Every public utility engaged directly or indirectly in any other business than those mentioned in Section 3 of this act, shall, if required by the commission, keep and render separately to the commission, in like manner and form, the accounts of all such other business, in which case all the pro-

visions of this act shall apply with like force and effect to the books, accounts, papers and records of such other business.

(c) The commission shall cause to be prepared, suitable blanks for carrying out the purposes of this act and shall, when necessary, furnish such blanks to each public utility.

(d) No public utility shall keep any books, accounts, papers or records of the business transacted, than those prescribed or approved by the commission. Each public utility shall have an office in one of the towns, villages or cities in this state, in which its property, or some part thereof, is located, and shall keep in said office all such books, accounts, papers, and records as shall be required by the commission to be kept within the state. No books, accounts, papers or records required by the commission to be kept within the state, shall be at any time removed from the state, except upon such conditions as may be prescribed by the commission.

(e) The accounts of such public utilities shall be closed annually on the thirtieth day of June, a balance sheet taken promptly therefrom, and full annual reports of the business be made to the commission not later than the 15th day of September following the closing of the accounts. The reports shall be in such form as prescribed by the Commission, and shall contain all the information deemed by the commission necessary for the proper performance of its duties. The Commission may at any time, call for desired information omitted from such reports, or not provided for therein, whenever in the judgment of the commission, such information is necessary.

(f) Any commissioner or any person or persons authorized by the commission, shall have the right to examine the books, accounts, records and papers of any public utility for the purposes of determining their correctness and whether they are being kept in accordance with the rules and system prescribed by the commission.

Sec. 8. Any officer, agent or person, in charge of the books, accounts, records and papers, or any of them of any public utility, who shall refuse or fail for a period of thirty days, to furnish the commission with any report required by the provisions of this act, and any officer, agent or person in charge of any particular books, accounts, records or papers relating to the business of such public utility, who shall refuse to permit any commissioner or other person duly authorized by the

commission, to inspect such books, accounts, records or papers, on behalf of the commission, shall be subject to a fine of not than one hundred (100) dollars, or more than five hundred (500) dollars, such fine to be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction; and each day's refusal or failure on the part of such officer, agent or person in charge, shall be deemed a separate offense, and be subject to the penalty herein prescribed.

Sec. 9. The commission shall make and publish annual reports for each calendar year, showing its proceedings, which report, shall as nearly as may be conform in a general way, to those of the Railroad Commission of the state and be made at the same time. All the reports, records, accounts, files, papers, and memoranda of every nature in the possession of the commission shall be open to the public at all reasonable times, subject to the exception that when the commission deems it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than ninety days after the acquisition of such facts or information.

Sec. 10. (a) The commission shall ascertain and prescribe for each kind of public utility, suitable and convenient commercial units of product or service. These shall be lawful units for the purposes of this act.

(b) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage or other conditions pertaining to the supply of the product or service rendered by any public utility, and prescribe reasonable regulations for examination and testing of such product or service and for the measurement thereof.

(c) The commission shall provide for the examination and testing of any and all appliances used for the measuring of any product or service of a public utility. Any consumer or user may have any such appliances tested upon payment of the fees fixed by the commission. The commission shall declare and establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, which fees, however, shall be paid by the public utility and

repaid to the complaining party, if the quality or quantity of the product or the character of the service be found by the commission defective or insufficient in a degree to justify the demand for testing; or the commission may apportion the fees between the parties as justice may require.

(d) The commission may in its discretion, purchase such materials, apparatus and standard measuring instruments for such examinations and tests as it may deem necessary.

(e) The commission, its agents, experts, or examiners shall have the power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests provided in this act, and to set up and use on such premises any apparatus and appliances and occupy reasonable space therefor. Any public utility refusing to allow such examinations to be made as herein provided, shall be subject to the penalties prescribing in Section 8 of this act.

Sec. 11. (a) Every public utility shall file with the commission within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls and charges shown on such schedules shall not exceed the rates, tolls and charges in force at time of passage of this act. Every public utility shall file with and as a part of such schedule, all rules and regulations, that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public, shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public and as can be conveniently inspected.

(b) When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner, be printed and filed with the commission and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in Section 11 (a).

(c) No change shall thereafter be made in any schedule, including schedules of joint rates, except upon twenty days' notice to the commission, and all such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof ten days prior to the time the same are to take effect; provided that the commission upon application of any public utility, may prescribe a less time within which a reduction may be made; provided, however, that no advance or reduction of existing schedules shall be made without the concurrence of the commission. Copies of all new or amended schedules shall be filed and posted in the stations or offices of public utilities as in the case of original schedules. The commission may prescribe such changes in the form in which the schedules are issued by any public utility as may be found to be expedient.

Sec. 12. It shall be unlawful for any public utility to charge, demand, collect or receive a greater or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in such printed schedules, including schedules of joint rates, as may at the time be in force, or to demand, collect or receive any rate, toll, or charge not specified in such schedules. The rates, tolls, and charges named therein shall be the lawful rates, tolls and charges until the same are changed, as provided in this act. It shall likewise be unlawful for any public utility to grant any rebate, concession or special privilege to any consumer or user, which, directly or indirectly, shall or may have the effect of changing the rates, tolls, charges or payments, and any violation of the provisions of this section shall subject the violator to the penalty prescribed in Section 8 of this act. This, however, does not have the effect of suspending, rescinding, invalidating or in any way affecting existing contracts.

Sec. 13. The commission may prescribe classifications of the service of all public utilities, and such classifications may take into account the quantity used, the time when used and any other reasonable consideration. Each public utility is required to conform its schedule of rates, tolls and charges to such classifications.

Sec. 14. The commission shall have the power to adopt reasonable and proper rules and regulations relative to all inspections, tests, audits and investigations, and to adopt and

publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, and other parties before it. All hearings shall be open to the public.

Sec. 15. (a) The commission shall have authority to inquire into the management of the business of all public utilities and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from any public utility all necessary information to enable the commission to perform its duties.

(b) The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand have the right to inspect the books, accounts, papers, records and memoranda of any public utility and to examine under oath, any officer, agent or employee of such public utility in relation to its business and affairs.

(c) Any person, other than one of said commissioners who shall make such demand, shall produce his authority to make such inspection.

(d) The commission may require by order or subpoena, to be served on any public utility, in the same manner that a summons is served in a civil action in the district court the production, within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by such public utility in any office or place without the State of Montana, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction.

(e) Any public utility failing or refusing to comply with any such order or subpoena, shall be subject to the liability named in Section 8 of this act.

Sec. 16. The commission is authorized to employ an engineer at a salary of not to exceed twenty-four hundred (\$2400) dollars per annum, also examiners, experts, clerks, accountants or other assistants as it may deem necessary, at such rates of compensation as it may determine upon.

Sec. 17. Upon a complaint made against any public utility by any mercantile, agricultural or manufacturing society or club, or by any body politic, or municipal organization, or association or associations, the same being interested, or by any person or persons, firm or firms, corporation or corporations, provided such persons, firms or corporations are directly affect-

ed thereby that any of the rates, tolls, charges or schedule or any joint rate or rates are in any way unreasonable or unjustly discriminatory or that any regulations, measurements, practices, or act whatsoever affecting or relating to the production, transmission or delivery or furnishing of heat, light, water or power or any service in connection therewith or the conveyance of any telegraph or telephone message or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate, the commission shall proceed, with or without notice, to make such investigation as it may deem necessary. But no order affecting such rates, tolls, charges, schedules, regulations, measurements, practice or act complained of, shall be entered without a formal hearing.

(b) The commission shall give the public utility and the complainant or complainants, at least ten days' notice of the time when and the place where such hearing will be held, at which hearing both the complainant and the public utility shall have the right to appear by counsel or otherwise, and be fully heard. Either party shall be entitled to an order by the commission for the appearance of witnesses or the production of books, papers and documents containing material testimony. Witnesses appearing upon the order of the commission shall be entitled to the same fees and mileage as witnesses in civil cases in the courts of the state, and the same shall be paid out of the state treasury in the same manner as other claims against the state are paid; but no fees or mileage shall be allowed, unless the chairman of the commission shall certify to the correctness of the claim.

Sec. 18. If any party ordered to appear before the commission as a witness shall fail to obey such order, the commission or any member, or the secretary thereof, may apply to the clerk of the nearest district court, for a subpoena commanding the attendance of said witness before the commission. It shall be the duty of such clerk to issue such subpoena, and of any peace officer to serve the same. Disobedience to such subpoena shall be deemed a contempt of court and punished accordingly.

Sec. 19. (a) If, upon such hearing and due investigation, the rates, tolls, charges, schedules or joint rates shall be found to be unjust, unreasonable or unjustly discriminatory, or to be preferential or otherwise in violation of the provisions of

this act, the commission shall have the power to fix and order substituted therefor, such rate or rates, tolls, charges, or schedules, as shall be just and reasonable. If it shall in like manner be found that any regulation, measurement, practice, act or service complained of, is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of the provisions of this act, or if it be found that the service is inadequate or, that any reasonable service cannot be obtained, the commission shall have power to substitute therefor such other regulations, measurements, practices, service or acts, and make such order relating thereto as may be just and reasonable.

(b) When complaint is made of more than one rate, charge or practice, the commission may in its discretion, order separate hearing upon the several matters complained of, and at such times and places as it may prescribe. The commission may at any time, upon its own motion, investigate any of the rates, tolls, charges, rules, regulations, practices and service, after a full hearing, as above provided, and by order, make such changes as may be just and reasonable the same as if a formal complaint had been made.

(c) Any public utility may make complaint as to any matter affecting its own product or service with like effect, as though made by any mercantile, agricultural or manufacturing society, body politic, or municipal organization or person or persons. Notice of the hearing upon any such complaint shall be given to the persons interested in such manner as the commission may by rule prescribe.

Sec. 20. The commission or any party to any proceeding before it, may cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil actions.

Sec. 21. A full and complete record shall be kept of all proceedings before the commission or its representatives on any formal investigation, and all testimony shall be taken down by the stenographer appointed by the commission. Whenever any complaint is served upon the commission as hereinafter provided, for the bringing of actions against the commission, before the action is reached for trial the commission shall cause a certified copy of all proceedings held and testimony taken upon such investigation, to be filed with the clerk of the court in which the action is pending.

Sec. 22. No person shall be excused from testifying, or from producing books and papers in any proceedings based upon or growing out of any alleged violation of the provisions of this act, on the ground of, or for the reason that, the testimony or evidence documentary or otherwise, required of him may tend to incriminate or subject him to penalty or forfeiture; but no person having so testified, shall be prosecuted or subjected to any penalty or forfeiture for, or on account of any transaction, matter or thing, concerning which he may have testified or produced any documentary evidence; provided, that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

Sec. 23. Any officer, agent, or employee of any public utility who shall wilfully fail or refuse to fill out and return any blanks as required by this act or shall wilfully fail or refuse to answer any questions therein propounded, or shall knowingly or wilfully give a false answer to any such questions, or shall evade the answer to such questions, where the fact inquired of is within his knowledge, or who shall, upon proper demand wilfully fail or refuse to exhibit to any commission or any commissioners, or any person also authorized to examine the same, any book, paper or account of such public utility which is in his possession or under his control, shall be subject to the penalty prescribed in Section 8 of this act.

Sec. 24. The commission shall inquire into any neglect or violation of the laws of this state by any such public utility as hereinbefore defined, doing business therein, or by the officers, agents, or employees thereof, and shall have the power and it shall be its duty, to enforce the provisions of this act, and report all violations thereof to the Attorney General; upon the request of the commission it shall be the duty of the Attorney General or the Prosecuting Attorney of the proper, or any county, to aid in any investigations, prosecutions, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act.

Sec. 25. All rates, fares, charges, classifications and joint rates fixed by the commission shall be enforced, and shall be prima facie lawful, from the date of the order until changed or modified by the commission, or in pursuance of Section 26 of this act. All regulations, practices and service, pre-

scribed by the commission, shall be enforced and shall be brought for that purpose, pursuant, to the provisions of Section 27 of this act, or until changed or modified by the commission itself upon satisfactory showing made.

Sec. 26. Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within ninety (90) days commence an action in the district court of the proper county against the commission and other interested parties as defendants to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice or service, fixed in such order is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within thirty (30) days after the service thereof whereupon such action shall be at issue and stand ready for trial upon twenty (20) days' notice to either party.

All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to said commission.

(a) No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; provided, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction.

(b) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen (15) days from the date of such transmission. Upon receipt of such evidence the commission

shall consider the same and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(c) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(d) Either party to said action within sixty (60) days after service of a copy of the order or judgment of the court may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the Supreme Court of Montana the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(e) In all actions under this act the burden of proof shall be upon the party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be.

Sec. 27. The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death, or injury to any person, of such gravity as to require the attention of a physician or surgeon. The testimony taken at such hearing shall be transcribed and filed in the office of the commission.

(a) It is hereby made the duty of every public utility operating within the state, promptly upon the occurrence of any accident, such as is mentioned above, to report by telegraph followed by written report, the same to the commission, in which report shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. The commission shall prescribe forms for the purpose of making such written reports. Reports of accidents as referred to in this section shall be included in the commission's annual report to the Governor.

Sec. 28. If any public utility shall violate any provision of this act, or shall do any act herein prohibited, or shall fail, or refuse to perform any duty enjoined upon it, or upon failure of any public utility to place in operation any rate or joint rate or do any act herein prohibited, for which a penalty has not been provided, or shall fail, neglect or refuse to obey any lawful requirement or order made by the commission or any court, for every such violation, failure or refusal, such public utility shall be subject to the penalty prescribed by section 8 of this act.

Sec. 29. Every annual report, record or statement required by this act to be made to the commission shall be sworn to by the proper officer, agent or person in charge of such public utility. Any intentionally false oath as to the correctness of such report, record or statement, shall be deemed perjury, and the person making such false oath shall, upon conviction, be punished as in the case of other perjuries.

Sec. 30. Any forfeiture or penalty herein provided shall be recovered and suit thereon shall be brought in the name of the State of Montana in the district court of any county having jurisdiction of the defendant. The Attorney General of Montana shall be the counsel in any proceeding, investigation, hearing or trial, prosecuted or defended by the commission, as also shall any prosecuting attorney selected by said commission or other special counsel furnished said commission in any county where such action is pending.

Sec. 31. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions thereof and all orders of the commission, the commission may compel compliance with the provisions of this act and of the orders of the commission by proceedings in mandamus, injunction, or by other civil remedies.

Sec. 32. The commission and secretary and such clerks and experts as may be employed, shall be entitled to receive from the state their necessary expenses while traveling on the business of the commission, including the cost of lodging and subsistence. Such expenditure shall be sworn to by the person who incurred the expenses and be approved by the chairman of the commission.

Sec. 33. Each section of this act and every part of each section are hereby declared to be independent sections and parts of sections, and the holding of any section or part there-

of to be void or inoperative for any cause, shall not be deemed to affect any other section thereof.

Sec. 34. For the purpose of carrying out the provisions of this act, the sum of \$15,000.00 is hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

Sec. 35. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 36. This act shall be in full force and effect from and after its passage and approval by the Governor.

Approved March 4th, 1913.

Telegraph, Telephone and Electric Power Companies.

4400. **Rights of Way for Pole Lines Along Streets, Roads and Highways.**—A telegraph, telephone, electric light or electric power line, corporation, or a person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric-power line or power lines, from point to point, along and upon any of the public roads, streets and highways in the State of Montana, by the erection of necessary fixtures, including posts, piers and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets or highways and nothing herein shall be so construed as to restrict the powers of city or town councils. [Act approved March 7, 1907.] (10th Sess. Chap. 192.)

4401.(Sec. 1001.) **Construction and connection.**—Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations can not agree as the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under the Code of Civil Procedure and the damages assessed and the right of connection granted, as provided in the Code of Civil Procedure.

4402. (Sec. 1002.) **Consolidation of Competing Lines Forbidden.**—No telegraph or telephone company shall consolidate with, or hold a controlling interest in the stock or bonds of

any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone.

8745. **Interference With Electric Lines or Apparatus.**—Every person who unlawfully or maliciously takes down, removes, injures, interferes with or obstructs any line or lines erected or maintained for the purpose of transmitting electricity for developing light, heat or power, or any part thereof, or any insulation or cross-arm appurtenance or apparatus connected therewith, or severs or in any way interferes with the wire or wires, cable or cables, current or currents thereof, or who attempts to do the same, is punishable by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding one year. [Act approved March 5th, 1903.] (8th Sess. Chap. 71.)

Carriage of Messages.

5330. (Sec. 2860.) **Obligations of Carriers of Messages.**—A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main office of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route, toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

5331. (2861.) **Degree of Care and Diligence Required.**—A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

Common Carriers of Messages.

5361. (Sec. 2930.) **Order of Transmission of Telegraphic Messages.**—A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business.

2. Messages giving information relating to the sickness or death of any person.

3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

4. Other messages in the order in which they were received.

5362. (Sec. 2931.) **Order in Other Cases.**—A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States, or of this state, on public business, to which he must always give priority.

5363. (Sec. 2932.) **Damages When Message Is Refused or Postponed.**—Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recovery from the carrier his actual damages, and fifty dollars in addition thereto.

8762. (Sec. 1065.) **Disclosing Contents of Telegraphic Message.**—Every person who wilfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

8763. (Sec. 1066.) **Altering Telegraphic Messages.**—Every person who wilfully alters the purport, effect, or meaning of a telegraphic message to the injury of another, is punishable as provided in the preceding section.

8764. (Sec. 1067.) **Opening Telegrams.**—Every person not connected with any telegraph office who, without the authority or the consent of the person to whom the same may be directed, wilfully opens any sealed envelope inclosing a telegraphic message and addressed to another person, with the purpose of learning the contents of such message, or who fraudulently represents another person and thereby procures to be delivered to himself any telegraphic message addressed to such person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in Sec. 8762 (1065.)

8823. (Sec. 1150.) **Neglect or Postponement of Telegraphic Messages.**—Every agent, operator, or employe of any telegraph office who wilfully refuses or neglects to send any message received at such office for transmission, or wilfully postpones the same out of its order, or wilfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered, or to require the sending, receiving or delivering of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this state, or other resistance to lawful authority, or any message calculated to further any plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or facilitate the escape of any criminal or person accused of crime.

8824. (Sec. 1151.) **Employe Using Information From Messages.**—Every agent, operator, or employe of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to another person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employe, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the state prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

8825. (Sec. 1152.) **Clandestinely Learning the Contents of a Telegram.**—Every person who, by means of any machine, instrument, or contrivance, or in any other manner, wilfully and fraudulently reads, or attempts to read, any message, or learn the contents thereof, while the same is being sent over any telegraph line, or wilfully and fraudulently, or clandestinely learns or attempts to learn the contents or meaning of any message, whilst the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in Sec. 8824 (1151.)

8826. (Sec. 1153.) **Bribing Telegraphic Operator.**—Every person who, by the payment or promise of any bribe, induce

ment, or reward, procures or attempts to procure any telegraph agent, operator or employe to disclose any private message, or the contents purport, substance, or meaning thereof, or offers to any such agent, operator, or employe any bribe, compensation or reward, for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employe, or uses or attempts to use any such information so obtained, is punishable as provided in Sec. 8824 (1151).

Legislative Power of Cities.

3290. (Sec. 4813.) **Special Privilege Must Not Be Granted.**—The council must not grant a franchise or special privilege to any person, and its powers are those only prescribed in this title and those necessarily incident thereto.

3291. **Grant of Franchise Must Be Submitted to Tax-Paying Freeholders.**—No franchise for any purpose whatsoever shall be granted by any city or town, or by the mayor or city council thereof, to any person or persons, association or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax roll preceding such election. [Act approved March 5th, 1903, Sec. 1.] (8th Sess. Chap. 85.)

3292. **Same. Notice of Election.**—A notice of such election must be published at least in one daily newspaper, if there be one published in the city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration if any there be to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X," opposite the answer he intends to vote for. Such election must be conducted and canvassed, and the return made in the same manner as other city or town elections. [Act approved March 5th, 1903, Sec. 2.] (8th Sess. Chap. 85.)

3293. **When Voted Council Must Pass Ordinance.**—If the majority of votes cast at the election be "For granting franchise," the mayor and city council must thereupon grant the

same by the passage and approval of a proper ordinance. [Act approved March 5th, 1903. Sec. 3.] (8th Sess. Chap. 85.)

3259. **Powers of City Councils.**—The city or town council has power.

1. To make and pass all by-laws, ordinances, orders and resolutions not repugnant to the constitution of the United States, or of the State of Montana, or of the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

2. To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

3. To license all industries, pursuits, professions and occupations, and to impose penalties for failure to comply with such license requirements; but the amount to be paid for such license must not exceed the sum required by the state law when the state law requires a license therefor.

4. To fix the amount, terms and manner of issuing and revoking licenses, but the council may refuse to issue licenses when it may deem it best for the public interests.

6. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds, and vacate the same.

8. To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use of obstruction of streets, sidewalks and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

10. To regulate or prohibit the fast driving of horses, animals or vehicles within the city or town.

11. To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

12. To require the lighting of any railroad track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style and size of the lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp posts, and to require the construction of crossings on the line of any railroad track or route within the

city or town, the cars of which are propelled by steam or otherwise where the said track intersects or crosses any street, alley or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof, and in case the owner of such railroad fails to comply with such requirements the council may cause the same to be done, and if may assess the expense thereof against such owner, and the same constitutes a lien on any property belonging to such owner within such city or town, and may be collected as other taxes.

13. To license and authorize the construction and operation of street railroads and require them to conform to the grade of the street as the same are or may be established.

43. To regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets, alleys, or within the limits of any city or town.

54. To license and regulate hackney carriages, carts, omnibuses, wagons and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

56. To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who has exclusive jurisdiction within the city or town.

64. To contract an indebtedness on behalf of a city or town upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, bridges, water-works, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches, and water rights for supplying the city or town with water, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes; provided, that no money must be borrowed on bonds issued for the construction, purchase or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been

submitted to the vote of the tax-payers affected thereby of the city or town and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt: The additional indebtedness authorized, including all indebtedness heretofore contracted, which is unpaid or outstanding, for the construction of a sewerage system, shall not exceed ten per centum over and above the three per cent. heretofore referred to, the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for state and county taxes; and, provided, further, that the above limit of three per centum shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby and carried in the affirmative by a vote of the majority of said tax-payers who vote at such election. It is further provided, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water, desired by the city or town for supplying the said city or town with water, the city or town granting such franchise, or entering in such contract, or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply upon such terms as the parties agree; in case they cannot agree, then the said city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use; and any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the

city or town council shall procure and appropriate water rights and title to the same and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation or otherwise. Cities and towns shall have jurisdiction and control over the territory occupied by their public works and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works and also over the source or stream from which water is taken for the enforcement of its sanitary ordinance, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

66. To grant the right of way through the streets, avenues and other property of a city or town for the purpose of street or other railroads and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

73. To permit the use of the streets and alleys of the city or town for the purpose of laying down gas, water and other mains, but no excavations must be made for such purpose without the permission of the council, or its authorized officer; and the streets and alleys must be placed in as good condition by the person or corporation making the excavation, as they were before the excavation was made; and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

75. To condemn private property for opening, establishing, widening or altering any streets, alley, park, sewer, waterway, in the city or town, or for any other public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceeding thereunder had as provided in

the Code of Civil Procedure concerning eminent domain.

3413. Construction of Waterworks.—Whenever the council of any city or town desires to construct or acquire a system of water works or to lay extensions to water mains, it may create a special improvement district in the manner hereafter provided, and may enact by ordinance that such portion of the cost of constructing or acquiring such water system or the making of such extensions of water mains within such special improvement district thus created as shall be determined by the council, shall be paid by the entire district, each lot or parcel of land within said district to be assessed for that part of the whole cost, which its area bears to the area of the entire district, exclusive of streets, alleys and public places; provided, however, that the whole cost so assessed shall at no time exceed the sum of one dollar and fifty cents (\$1.50) per linear foot of the entire length of the water mains, laid in such district. [Act approved February 21, 1905, Sec. 1.] (9th Sess. Chap. 27.)

3260. Inspection and Measurement of Gas and Electricity.—The council of any incorporated city or town shall have power, by ordinance, to provide for and regulate the inspection and the measurement of gas, electric or other light, and electric or other power, sold within its limits or brought into or carried through any such city or town. [Act approved March 1, 1907, Sec. 1.] (10th Sess. Chap. 57.)

8659. Larceny of Gas or Electricity.—Every person who, with intent to injure or defraud, procures, makes, or causes to be made, any pipe, tube, wire, or other conductor of gas or electricity, and connects the same, or causes it to be connected, with any main, service pipe, or other pipe for conducting or supplying illuminating gas or any wires or other conductor of electricity, in such manner as to supply illuminating gas or electricity to any lamp, motor, burner, or office, by or at which illuminating gas or electricity is consumed, around or without passing through the meter provided for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas or electric meter, or obstructs its action, is guilty of a misdemeanor. In prosecutions for offenses under this section proof that, any of the acts herein forbidden have been done in, upon, or about the premises owned or used by the defendant charged with

the commission of such offense in such a manner as to decrease or lessen the amount he should pay under his understanding or contract with any person or corporation engaged in the business of furnishing and selling gas or electricity, shall be prima facie evidence of the guilt of said defendant. [Act approved March 6th, 1897, Sec. 1.] (5th Sess. 248.)

8660. **Larceny of Water.**—Every person who, with intent to injure or defraud, connects or causes to be connected, any pipe, tube, wire electrical conductor or other instrument with any main, service pipe, or other pipe or conduit or flume for conducting water, or with any main, service pipe, or other pipe or conduit for conducting gas, or with any main service wires or other electrical conductor used for the purpose of conducting electricity for light or motive service, for the purpose of taking therefrom water, gas, or electricity without the knowledge of the owner thereof and with intent to evade payment therefor, is guilty of a misdemeanor. In prosecutions for offenses under this section proof that any of the acts herein forbidden have been done in, upon, or about the premises owned or used by the defendant charged with the commission of such offense in such a manner as to provide for such defendant's use, water, gas or electricity shall be prima facie evidence of the guilt of the defendant. [Act approved March 6th, 1897, Sec. 2.] (5th Sess. Chap. 248-9.)

8661. **False Device for Measuring Gas, Water or Electricity.**—Every person, or persons, or officer or officers or employe, or employes of any corporation or corporations who with intent to injure, or defraud, uses or causes to be used any false registering or false measuring device or meter for the measuring of any water, gas or electric current that is sold to any other person or persons, corporation or corporations, or who shall alter or change the record or measurement of any such meter or measuring device with intent to injure or defraud, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of not less than \$100 nor more than \$500. In prosecutions for offenses under this section, proof of the use of such false registering meter or proof of an attempt to collect payment from any consumer for any falsified amount or quantity of gas, water, or electricity shall be prima facie evidence of the guilt of such defendant. [Act approved March 6th, 1897.] (5th Sess. 249.)

Note.—Subject of this section is not embraced within title of act.

8767. (Sec. 1070.) **Breaking or Obstructing Water Pipes, Etc.**—Every person who wilfully breaks, digs up, obstructs, or injures any pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

1727. **Enclosure for Motormen of Street Cars.**—From and after the first day of December, A. D., 1908, it shall be unlawful for any person, partnership or corporation owning or operating a street railway in this state, or any officer or agent thereof, superintending, managing the said line of railway, or of the cars thereof, operating electric, cable or other cars, propelled either by steam, cable or electricity, which require the constant services, care, or attention of any person or persons on any part of such car, to require or permit such services, attention or care, of any of its employees, (or any other person or persons), between the first day of November and the first day of May, of each year, unless such person or persons, partnership or corporation, its said officers or superintendents and managing agents, have first provided the said car or cars with a proper and sufficient enclosure constructed of wood, iron or glass, or similar suitable material sufficient to protect such employees from exposure to the inclemencies of the weather, **Provided**, that such enclosures shall be so constructed as not to obscure the vision of the person operating the car; **Provided further** that during a fog or fall of snow sufficient to obscure the view of motormen he may be allowed to remove the glass in his immediate front so that the same shall not prevent the safe operation of the car. [Act approved March 4, 1907, Sec. 1.] (10th Sess. Chap. 78.)

1728. **Same.**—From and after said December first, A. D., 1908, it shall be unlawful for any person or persons, partnership or corporation so owning or operating street railways using steam, electric or cable cars, or any superintendent or managing officer or agent thereof, to cause or to permit to be used upon such line of railway, between the said November first and May first, of each and every year, any car or cars upon which the services of any employee such as specified in Section one of this act is required, unless such car or cars shall be provided with the enclosure required by said Sec. 1727 (1) of this act, except that any street railway company may at all times of the year run special cars not so protected, nor more

than four consecutive hours in one day. [Act approved March 4, 1907, Sec. 2.] (10th Sess. Chap. 78.) (See amended section 1728, below.)

1729. **Penalties.**—Any person or persons, partnership or corporation owning, operating or superintending or managing any such line of street railway or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of Sections 1727 (1) or 1728 (2) of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars or more than one hundred dollars. Each and every day that any such person or persons cause or permit any of their employees to operate such cars in violation of the provisions of Sec. 1727 (1) of this act, or cause such cars to be operated in violation of Sec. 1728 (2) of this act, shall be deemed a separate offense. [Act approved March 4, 1907, Sec. 3.] (10th Sess. Chap. 78.)

Chapter 104.—(13th Sessions.)

“An act to amend Section 1728 of the Revised Codes of the State of Montana of 1907, with reference to the regulation for the protection of street car employees.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. That Section 1728 of the Revised Codes of 1907 of Montana be and the same is hereby amended to read as follows: From and after said November first, A. D., 1913, it shall be unlawful for any person or persons, partnership or corporation so owning or operating street railways using steam, electric or cable cars, or any superintendent or managing officer or agent thereof, to cause or to permit to be used upon such line of railway, between the said November first and May first of each and every year, any car or cars upon which the services of any employee such as specified in Section one of this act is required, unless such car or cars shall be provided with the enclosure required by said Section 1728 (1) of this act. Except that the type of cars known as open cars or summer cars must be equipped with wind shield constructed of glass, iron and wood or other suitable material to extend completely across front of said car or cars to protect such employees from exposure to the inclemencies of the weather.

Approved March 15, 1913.

Chapter 80.—(13th Session.)

“An act to promote the safety of passengers and employees on street railway cars and trolley cars, and to provide for the use of certain safety appliances on all street railway cars or trolley cars used in regular service of conveying passengers in this state, and prescribing penalties for failure to comply with the provisions of this act.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. On or before September 1st, 1913, all double truck street railway, electric cars or trolley cars, so called, conveying passengers in the State of Montana shall be fitted with at least two independently operating brakes, one of which must be mechanical, such as air brake, electric short circuiting brake or electric-magnetic brake.

Sec. 2. Any corporation or person owning and operating street railway cars, electric or trolley cars, failing to comply with the provisions of this act, shall be liable to a fine of ten (\$10.00) dollars per car for each day operated without such equipment.

Sec. 4. This act shall be in full force and effect from and after September 1st, 1913.

Approved March 13, 1913.

Chapter 75.—(11th Session.)

“An act to regulate the hours of labor of telephone operators in cities and towns having a population of three thousand or over.”

Be it enacted by the Legislative Assembly of the State of Montana:

Sec. 1. On all lines of public telephones, operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than nine (9) hours, in twenty-four hours in cities or towns having a population of 3000 inhabitants, or over, provided, however, that the provisions of this act shall not apply to any person or persons, operator or operators, operating any telephone board or boards more than nine (9) hours in each twenty-four for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

Sec. 2. Any owner, lessee, company or corporation, who shall violate any of the provisions of this act shall upon con-

viction be punished by a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, and each and every day that such owner, lessee, company or corporation, may continue to violate any of the provisions of this act, shall be considered a separate and distinct offense and shall be punished as such.

Approved March 4, 1909.

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